RULES OF PRACTICE OF THE SUPREME COURT OF OHIO

Including amendments through April 1, 2002

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The following Rules of Practice of the Supreme Court of Ohio include all amendments adopted and effective through April 1, 2002.

Most of the rules are followed by Staff Commentary. Although the Supreme Court used the Staff Commentary in its deliberations on rule amendments, the Staff Commentary has not been adopted by the Supreme Court as part of the amendments.

Forms following the rules include samples of the types of documents most commonly filed in the Supreme Court. These samples are included to illustrate to attorneys and litigants the proper form to be used for documents filed in the Supreme Court. To ensure compliance with the rules, the complete text of the relevant rules should also be reviewed before documents are submitted for filing.

Filings may be made by delivering the documents in person or by mail addressed to the Clerk at the following address:

Clerk
Supreme Court of Ohio
30 East Broad Street, 2nd Floor
Columbus, Ohio 43215-3414

Certain documents may be filed by facsimile transmission to the Clerk at the following number: **(614) 752-4418.** Before a document is sent by facsimile transmission, Sec. 1(B) of S. Ct. Prac. R. XIV should be consulted to determine whether it is the type of document that may be filed in that manner.

All filings must be made during the regular business hours of the Clerk's Office, which are 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding holidays. The Supreme Court has adopted security procedures that apply to all visitors and persons with business before the Court. These include check-in with the State Highway Patrol and scanning of all materials brought into the Court. Persons hand delivering documents to the Clerk's Office should build in extra time for these security procedures, which must be followed before gaining access to the Clerk's Office. Documents received **in the Clerk's Office** after 5:00 p.m. will not be filed until the next business day.

The Supreme Court's website may be accessed to review frequently asked questions and answers about filing: www.sconet.state.oh.us. Questions regarding the Rules of Practice or the status of cases pending before the Supreme Court may be directed to the Clerk's Office at the following phone numbers: **(614) 466-3931 or (614) 466-5201**.

RULES OF PRACTICE OF THE SUPREME COURT OF OHIO

INTRODUCTION

The Supreme Court is the highest court in the State of Ohio. The Court consists of a Chief Justice and six Justices who are elected by the citizens of the State of Ohio to six-year terms. A majority of the Supreme Court is necessary to constitute a quorum or to render a judgment.

The jurisdiction of the Supreme Court is outlined in Article IV, Section 2(B) of the Ohio Constitution as summarized below.

The Supreme Court has original jurisdiction in the following:

(1) Quo warranto;
(2) Mandamus;
(3) Habeas corpus;
(4) Prohibition;
(5) Procedendo;
(6) Any cause on review as may be necessary to its complete determination;
(7) Admission to the practice of law, the discipline of persons admitted to the practice of law, and all other matters relating to the practice of law.

The Supreme Court has appellate jurisdiction in the following:

(1) Appeals from the courts of appeals as a matter of right in the following:
  (a) Cases originating in the courts of appeals;
  (b) Cases in which the death penalty has been affirmed by a court of appeals (for an offense committed prior to January 1, 1995);
  (c) Cases involving questions arising under the constitution of the United States or of Ohio;
(2) Appeals from the courts of appeals in felony cases if leave is first obtained;
(3) Direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed (for an offense committed on or after January 1, 1995);
(4) Appeals of the proceedings of certain administrative officers or agencies as provided by statute;
(5) Cases of public or great general interest, if the Supreme Court directs a court of appeals to certify its record to the Supreme Court;
(6) Any case certified by a court of appeals to the Supreme Court pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution.

The Supreme Court holds regular sessions that are open to the public. Generally, these sessions are held in the Supreme Court Courtroom on the third floor of the Rhodes State Office Tower, 30 East Broad Street, across from the State House in Columbus, Ohio. Calendars of the Court sessions are available in the Clerk's Office.

Staff Commentary to the Introduction
(April 1, 1996 Amendments)

The introduction to the Rules of Practice includes a description of the Supreme Court's jurisdiction. In the former rules, this description was taken verbatim from the Ohio Constitution, Article IV, Section 2(B). In the amendments, the description -- no longer taken verbatim from the Constitution -- has been revised to describe the Court's jurisdiction more directly and to include in the description the Court's jurisdiction to hear direct appeals of death penalty cases pursuant to the recent constitutional amendment.

RULE I. REQUIREMENTS FOR ATTORNEYS PRACTICING BEFORE THE SUPREME COURT

Section 1. Registration as Prerequisite to Appearance.

In order to file pleadings, memoranda, briefs, or documents other than those required to perfect an appeal, or to participate in oral argument, attorneys shall be registered for active status with the Clerk of the Supreme Court as required by Rule VI of the Supreme Court Rules for the Government of the Bar of Ohio or shall have complied with the *pro hac vice* requirements of Section 2 of this rule. In death penalty cases, in addition to meeting the preceding requirements, any appointed attorney shall satisfy the certification requirements of Rule 20 of the Rules of Superintendence for the Courts of Ohio and appear on the list of attorneys certified to represent capital defendants on appeal. The Supreme Court may strike pleadings, memoranda, briefs, or other documents filed by attorneys not in compliance with this rule.

Section 2. Admission *Pro Hac Vice*.

(A) The Supreme Court may permit any attorney who is admitted to practice in the highest court of a state, commonwealth, territory, or possession of the United States or the District of Columbia, or who is admitted to practice in the courts of a foreign state, to appear *pro hac vice* and file pleadings, memoranda, briefs, or other documents or participate in oral argument before the Supreme Court.

(B) Admission *pro hac vice* will be allowed only on motion of an attorney admitted to practice in Ohio and registered with the Clerk for active status. The motion shall briefly and succinctly state the qualifications of the attorney seeking admission. It shall be filed with the first pleading or brief in which the attorney seeks to participate or at least 30 days before oral argument if the attorney seeks only to participate in oral argument. The Supreme Court may withdraw admission *pro hac vice* at any time.

Section 3. Designation of Counsel of Record.

Where two or more attorneys represent a party, one attorney shall be designated on each pleading, memorandum, brief, or other document filed as counsel of record to receive notices and service on behalf of that party. The Clerk may send notices regarding the case, including Supreme Court orders, to the business address that counsel of record has registered with the Attorney Registration Office pursuant to Gov. Bar R. VI.

Staff Commentary to Rule I

(April 1, 1996 Amendments)

Section 1

This amendment extends the certification requirements of C.P. Sup. R. 65 to appointed attorneys who represent capital defendants before the Supreme Court.

RULE II. INSTITUTION OF APPEALS; NOTICE OF APPEAL

Section 1. Types of Appeals.

(A) Appeals from Courts of Appeals.

(1) Appeals of right. An appeal of a case in which the death penalty has been affirmed for an offense committed prior to January 1, 1995, an appeal from the decision of a court of appeals under App. R. 26(B) in a capital case, or a case that originated in the court of appeals invokes the appellate jurisdiction of the Supreme Court and shall be designated an appeal of right. The Supreme Court will render judgment after the parties are given an opportunity to brief the case on the merits in accordance with S. Ct. Prac. R. VI.

(2) Claimed appeals of right. An appeal that claims a substantial constitutional question, including an appeal from the decision of a court of appeals under App. R. 26(B) in a noncapital case, may invoke the appellate jurisdiction of the Supreme Court and shall be designated a claimed appeal of right. In accordance with S. Ct. Prac. R. III, the Supreme Court will determine whether to allow the appeal.

(3) Discretionary appeals. An appeal that involves a felony or a question of public or great general interest invokes the discretionary jurisdiction of the Supreme Court and shall be designated a discretionary appeal. In accordance with S. Ct. Prac. R. III, the Supreme Court will determine whether to allow the appeal.

(4) Certified conflict cases. A case in which the court of appeals has issued an order certifying a conflict pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution invokes the appellate jurisdiction of the Supreme Court. In accordance with S. Ct. Prac. R. IV, the Supreme Court will act upon the court of appeals order.

(B) Appeals from Administrative Agencies: Board of Tax Appeals; Public Utilities Commission; Power Siting Board.

An appeal that involves review of the action of the Board of Tax Appeals, the Public Utilities Commission, or the Power Siting Board invokes the appellate jurisdiction of the Supreme Court. The Supreme Court will render judgment after the parties are given an opportunity to brief the case on the merits in accordance with S. Ct. Prac. R. VI.

(C) Appeals from Courts of Common Pleas.

An appeal of a case in which the death penalty has been imposed for an offense committed on or after January 1, 1995, invokes the appellate jurisdiction of the Supreme Court and shall be designated an appeal of right. The Supreme Court will render judgment after the parties are given an opportunity to brief the case on the merits in accordance with S. Ct. Prac. R. VI and XIX.

Section 2. Institution of Appeal from Court of Appeals.

(A) Perfection of Appeal.

(1) (a) To perfect an appeal from a court of appeals to the Supreme Court, other than in a certified conflict case (which is addressed in S. Ct. Prac. R. IV), the appellant shall file a notice of appeal in the Supreme Court within 45 days from the entry of the judgment being appealed. If the appeal involves termination of parental rights or adoption of a minor child, or both, the appellant shall file the notice of appeal in the Supreme Court within 20 days from the entry of the judgment being appealed. The date the court of appeals filed its judgment entry for journalization with its clerk, in accordance with App. R. 22(E), shall be considered the date of entry of the judgment being appealed. If the appeal is a claimed appeal of right or a discretionary appeal, the appellant shall also file a memorandum in support of jurisdiction, in accordance with S. Ct. Prac. R. III, at the time the notice of appeal is filed.

(b) Except as provided in divisions (A)(2), (3), and (4) of this section, the time period designated in this rule for filing a notice of appeal and memorandum in support of jurisdiction is mandatory, and the appellant's failure to file within this time period shall divest the Supreme Court of jurisdiction to hear the appeal. The Clerk of the Supreme Court shall refuse to file a notice of appeal or a memorandum in support of jurisdiction that is tendered for filing after this time period has passed.

(2) (a) If a party timely files a notice of appeal in the Supreme Court, any other party may file a notice of appeal or cross-appeal in the Supreme Court within the later of the time prescribed by division (A)(1) of this section or 10 days after the first notice of appeal was filed.

(b) A notice of appeal shall be designated and treated as a notice of cross-appeal if it is filed both:

(i) after the original notice of appeal was filed in the case;

(ii) by a party against whom the original notice of appeal was filed.

(c) If a notice of cross-appeal is filed, a memorandum in support of jurisdiction for the cross-appeal shall be filed by the deadline imposed in S. Ct. Prac. R. III, Section 4.

(3) (a) In a claimed appeal of right or a discretionary appeal, if the appellant intends to seek from the Supreme Court an immediate stay of the court of appeals judgment that is being appealed, the appellant may file a notice of appeal in the Supreme Court without an accompanying memorandum in support of jurisdiction, provided both of the following conditions are satisfied:

(i) A motion for stay of the court of appeals judgment shall accompany the notice of appeal.

(ii) A copy of the court of appeals opinion and judgment entry being appealed shall be attached to the motion for stay.

(b) A memorandum in support of jurisdiction shall be filed no later than 45 days from the entry of the court of appeals judgment being appealed. If the appeal involves termination of parental rights or adoption of a minor child, or both, the memorandum in support of jurisdiction shall be filed no later than 20 days from the entry of the court of appeals judgment being appealed. The Supreme Court will dismiss the appeal if the memorandum in support of jurisdiction is not timely filed pursuant to this provision.

(4) (a) In a felony case, when the time has expired for filing a notice of appeal in the Supreme Court, the appellant may seek to file a delayed appeal by filing a motion for delayed appeal and a notice of appeal. The motion shall state the date of entry of the judgment being appealed and adequate reasons for the delay. Facts supporting the motion

shall be set forth in an affidavit. A copy of the decision being appealed shall be attached to the motion.

(b) The provision for delayed appeal applies to appeals on the merits and does not apply to appeals involving postconviction relief, including appeals brought pursuant to *State v. Murnahan* (1992), 63 Ohio St. 3d 60, and App. R. 26(B). The Clerk shall refuse to file motions for delayed appeal involving postconviction relief.

(c) If the Supreme Court grants a motion for delayed appeal, the appellant shall file a memorandum in support of jurisdiction within 30 days after the motion for delayed appeal is granted.

(B) Contents of Notice of Appeal.

(1) The notice of appeal shall state all of the following:

(a) The name of the court of appeals whose judgment is being appealed;

(b) The court of appeals caption and case number;

(c) The date of the entry of the judgment being appealed;

(d) That one or more of the following are applicable:

(i) The case involves affirmance of the death penalty;

(ii) The case originated in the court of appeals;

(iii) The case raises a substantial constitutional question;

(iv) The case involves a felony;

(v) The case is one of public or great general interest;

(vi) The case involves termination of parental rights or adoption of a minor child, or both;

(vii) The case claims ineffective assistance of appellate counsel. [See *State v. Murnahan* (1992), 63 Ohio St. 3d 60, and App. R. 26(B).]

See Form A following these rules for a sample notice of appeal from a court of appeals.

(2) In an appeal of right, the notice of appeal shall be accompanied by a copy of the court of appeals judgment entry that is being appealed. If the opinion of the court of appeals serves as its judgment entry and is in excess of 10 pages, a copy of the cover page of the opinion may be filed in lieu of the complete opinion.

(C) Notice to the Court of Appeals.

The Clerk of the Supreme Court shall send a copy of the notice of appeal or cross-appeal to the clerk of the court of appeals whose judgment is being appealed.

(D) Jurisdiction of Court of Appeals after Appeal to Supreme Court Is Perfected.

(1) After an appeal is perfected from a court of appeals to the Supreme Court, the court of appeals is divested of jurisdiction, except to take action in aid of the appeal, to rule on an application timely filed with the court of appeals pursuant to App. R. 26, or to rule on a motion to certify a conflict under Article IV, Section 3(B)(4) of the Ohio Constitution.

(2) In all appeals from a court of appeals, the court of appeals retains jurisdiction to appoint counsel to represent indigent parties before the Supreme Court where a judgment of the court of appeals is being defended by a defendant or upon remand and order of the Supreme Court that counsel be appointed in a particular case.

Section 3. Institution of Appeal from Administrative Agency.

(A) Appeal from the Board of Tax Appeals.

(1) A notice of appeal from the Board of Tax Appeals shall be filed with the Supreme Court and the Board within 30 days from the date of the entry of the decision of the Board, include a copy of the decision being appealed, set forth the claimed errors, and otherwise be in

conformance with section 5717.04 of the Revised Code. See Form B following these rules for a sample notice of appeal from the Board of Tax Appeals.

(2) If a party timely files a notice of appeal in the Supreme Court, any other party may file a notice of appeal pursuant to section 5717.04 of the Revised Code.

(B) Appeal from the Public Utilities Commission.

(1) A notice of appeal from the Public Utilities Commission shall be filed with the Supreme Court and with the Commission within the time specified in and in conformance with sections 4903.11 and 4903.13 of the Revised Code. See Form C following these rules for a sample notice of appeal from the Public Utilities Commission.

(2) If a party files a notice of appeal in the Supreme Court, any other party may file a notice of cross-appeal pursuant to sections 4903.11 and 4903.13 of the Revised Code.

(C) Appeal from the Power Siting Board.

A notice of appeal or cross-appeal from the Power Siting Board shall be filed with the Supreme Court and the Board in accordance with division (B) of this section and pursuant to section 4906.12 of the Revised Code. See Form D following these rules for a sample notice of appeal from the Power Siting Board.

Section 4. Filing of Joint Notice of Appeal.

Where there are multiple parties appealing from the same decision of a court of appeals or an administrative agency, appellants may join in the filing of a single notice of appeal.

Section 5. Caption of Appeal.

Except in appeals from the Public Utilities Commission or the Power Siting Board, an appeal shall be docketed under the caption given to the action in the court or agency whose decision is being appealed.

Staff Commentary to Rule II
(April 1, 1996 Amendments)

Section 1(A)(1) and (2)

The new language provides that only capital *Murnahan* cases are considered appeals of right. Noncapital *Murnahan* cases will be treated as claimed appeals of right, since these cases claim substantial constitutional questions. As with other claimed appeals of right, they will be considered on the merits only if, after reviewing jurisdictional memoranda, the Court decides to allow the appeal under S. Ct. Prac. R. III.

Section 1(C)

This new provision classifies as appeals of right the new death penalty appeals that will be brought to the Supreme Court under the November 1994 amendment to the Ohio Constitution.

Section 2(A)(1)

The appellant may appeal a court of appeals decision within 45 days from "entry of the judgment being appealed". The amendment defines the date of "entry of the judgment being appealed" consistent with App. R. 22(E).

Section 2(A)(2)(b)

This amendment defines cross-appeal. It also clarifies that a memorandum in support of jurisdiction for a cross-appeal need not be filed with the notice of appeal, but should be filed in accordance with S. Ct. Prac. R. III, Section 4.

Section 2(A)(3)

Section 2(A)(3) in the former rules was a grandfather provision. It is no longer necessary and has therefore been stricken.

In the former rules, there was no provision for filing a motion for stay of the court of appeals judgment in this Court without first perfecting an appeal to the Supreme Court. In a claimed appeal of right or a discretionary appeal, the need to prepare a memorandum in support of jurisdiction as a prerequisite to perfecting the appeal could delay the appellant's efforts to obtain an immediate stay from the Supreme Court.

The new language in Section 2(A)(3) permits an appellant seeking an immediate stay to perfect an appeal to the Supreme Court without filing a memorandum in support of jurisdiction with the notice of appeal. The appellant is, however, required to file a motion for stay with the notice of appeal and to file a memorandum in support of jurisdiction within 45 days from the entry of the court of appeals judgment.

Section 2(A)(4)

These amendments clarify current practice.

Section 2(B)(2)

When a claimed appeal of right or a discretionary appeal is filed in the Supreme Court, the Clerk's Office is able to obtain case processing information from the memorandum in support of jurisdiction, to which is attached a copy of the court of appeals judgment entry being appealed. Because a memorandum in support of jurisdiction is not filed in an appeal of right, the Clerk's Office does not have immediate access to information that would assist it in processing the new case.

This amendment requires a copy of the court of appeals judgment entry that is being appealed to accompany the notice of appeal in an appeal of right. Having access to this judgment entry will facilitate the Clerk's Office in processing the appeal.

Section 2(D)

This amendment provides that a court of appeals retains jurisdiction to rule on either an application for reconsideration or an application for reopening timely filed pursuant to App. R. 26.

RULE III. DETERMINATION OF JURISDICTION ON CLAIMED APPEALS OF RIGHT AND DISCRETIONARY APPEALS

Section 1. Memorandum in Support of Jurisdiction.

(A) In a claimed appeal of right or a discretionary appeal, the appellant shall file a memorandum in support of jurisdiction with the notice of appeal. See Form E following these rules for a sample memorandum.

(B) A memorandum in support of jurisdiction shall contain all of the following:

(1) Table of contents, which shall include the proposition(s) of law stated in syllabus form as set forth in *Drake v. Bucher, Supt.* (1966), 5 Ohio St. 2d 37, at 39;

(2) A thorough explanation of why a substantial constitutional question is involved, why the case is of public or great general interest, or, in a felony case, why leave to appeal should be granted;

(3) A statement of the case and facts;

(4) Each proposition of law supported by a brief and concise argument.

(C) Except in postconviction death penalty cases, a memorandum shall not exceed 15 numbered pages, exclusive of the table of contents.

(D) A copy of the court of appeals opinion and judgment entry being appealed shall be attached to the memorandum. The appellant may also attach any other judgment entries or opinions issued in the case, if relevant to the appeal, and copies of unreported opinions cited in the memorandum. The memorandum shall not include any other attachments.

(E) Except as otherwise provided in S. Ct. Prac. R. II, Section 2(A), if the appellant does not tender a memorandum in support of jurisdiction for timely filing along with the notice of appeal, the Clerk shall refuse to file the notice of appeal.

Section 2. Memorandum in Response.

(A) Within 30 days after the memorandum in support of jurisdiction is filed, the appellee may file a memorandum in response. If the appeal involves termination of parental rights or adoption of a minor child, or both, any memorandum in response shall be filed within 20 days after the memorandum in support of jurisdiction is filed.

(B) The memorandum in response shall not exceed 15 numbered pages, except in postconviction death penalty cases; shall not include any attachments other than copies of unreported opinions cited in the memorandum; and shall contain both of the following:

(1) A statement of appellee's position as to whether a substantial constitutional question is involved, whether leave to appeal should be granted, or whether the case is of public or great general interest;

(2) A brief and concise argument in support of the appellee's position regarding each proposition of law raised in the memorandum in support of jurisdiction.

(C) The appellee shall include the Supreme Court case number on the cover page of the memorandum in response.

(D) If two or more notices of appeal are filed in a case in accordance with S. Ct. Prac. R. II, Section 2(A)(2), the appellee shall file only one memorandum in response. The time specified in Section 2(A) of this rule for filing the memorandum in response shall be calculated from the date the last memorandum in support of jurisdiction was filed in the case.

Section 3. Prohibition Against Supplemental and Reply Memoranda.

(A) Except as provided in S. Ct. Prac. R. VIII, Section 7, jurisdictional memoranda shall not be supplemented. If a relevant authority is issued by another court after the deadline has passed for filing a party’s jurisdictional memorandum, that party may file with the Supreme Court a citation to the relevant authority but shall not file additional argument.

(B) The appellant shall not file a reply to the jurisdictional memorandum filed by the appellee under Section 2 of this rule.

(C) The Clerk shall refuse to file supplemental or reply memoranda tendered for filing in violation of this section, and motions to waive the provisions of this section are prohibited and shall not be filed.

Section 4. Jurisdictional Memoranda in Case Involving Cross-Appeal.

(A) In a case involving a cross-appeal, the appellant/cross-appellee shall file a memorandum in support of jurisdiction when that party's notice of appeal is filed. Within 30 days thereafter, the appellee/cross-appellant shall file a combined memorandum both in response to appellant/cross-appellee's memorandum and in support of jurisdiction for the cross-appeal. Within 30 days thereafter, the appellant/cross-appellee shall file the last memorandum, which shall be limited to a response to appellee/cross-appellant's memorandum in support of jurisdiction for the cross-appeal.

(B) If the appeal or the cross-appeal involves termination of parental rights or adoption of a minor child, or both, the combined memorandum of appellee/cross-appellant shall be filed within 20 days after the filing of appellant/cross-appellee's memorandum in support of jurisdiction, and the last memorandum of appellant/cross-appellee shall be filed within 20 days after the filing of appellee/cross-appellant's combined memorandum.

(C) Except in postconviction death penalty cases, a memorandum filed under this section by the appellant/cross-appellee shall not exceed 15 numbered pages, and the memorandum filed by the appellee/cross-appellant shall not exceed 30 numbered pages.

Section 5. Jurisdictional Memorandum of *Amicus Curiae*.

(A) An *amicus curiae* may file a jurisdictional memorandum urging the Supreme Court to review or to decline to review on the merits a claimed appeal of right or a discretionary appeal. Leave to file an *amicus* memorandum is not required, but an *amicus* memorandum shall conform to the requirements of this rule.

(B) An *amicus* memorandum in support of jurisdiction shall be filed by the appellant's deadline for perfecting an appeal to the Supreme Court or, if later, by the appellant's deadline for filing a memorandum in support of jurisdiction. An *amicus* memorandum in response shall be filed by the appellee's deadline for filing a memorandum in response. The Clerk shall refuse to file an *amicus* memorandum that is not submitted timely.

Section 6. Determination of Jurisdiction by the Supreme Court.

After the time for filing jurisdictional memoranda has passed, the Supreme Court will review the jurisdictional memoranda filed and determine whether to allow the appeal and decide the case on the merits. If the appeal involves termination of parental rights or adoption of a minor child, or both, the Supreme Court will expedite its review and determination.

(A) If the appeal is a claimed appeal of right, the Supreme Court will do one of the following:

(1) Dismiss the appeal as not involving any substantial constitutional question;

(2) Allow the appeal, and either order the case or limited issues in the case to be briefed and heard on the merits or enter judgment summarily.

(B) If the appeal is a discretionary appeal involving a felony, the Supreme Court will do one of the following:

(1) Deny leave to appeal, refusing jurisdiction to hear the case on the merits;

(2) Grant leave to appeal, allowing the appeal, and either order the case or limited issues in the case to be briefed and heard on the merits or enter judgment summarily.

(C) If the appeal is a discretionary appeal asserting a question of public or great general interest, the Supreme Court will do one of the following:

(1) Decline jurisdiction to decide the case on the merits;

(2) Grant jurisdiction to hear the case on the merits, allowing the appeal, and either order the case or limited issues in the case to be briefed and heard on the merits or enter judgment summarily.

(D) The Supreme Court may delay its determination of jurisdiction on a claimed appeal of right or a discretionary appeal pending the outcome of any other case before the Supreme Court that may involve a dispositive issue.

(E) In any claimed appeal of right or discretionary appeal in which the state is not a party but nevertheless may have an interest, the Supreme Court may invite the state solicitor to file a jurisdictional memorandum expressing the views of the state before making its determination of jurisdiction.

Section 7. Appointment of Counsel in Felony Cases.

If the Supreme Court grants leave to appeal in a discretionary appeal involving a felony and an unrepresented party to the appeal is indigent, the Supreme Court will appoint the Ohio Public Defender or other counsel to represent the indigent party or order the court of appeals to appoint counsel as provided in S. Ct. Prac. R. II, Section 2(D)(2).

Staff Commentary to Rule III
(April 1, 1996 Amendments)

Section 1(B)

This amendment changes the order of the material presented in the memorandum in support of jurisdiction, placing the focus of the memorandum on the appellant's explanation of why the Court should accept the case for a full merit review.

Section 1(D)

This amendment prohibits attachments to the memorandum in support of jurisdiction other than those items enumerated. This will reduce the bulk of some memoranda that are filed with unnecessary, premature, or inappropriate attachments including, for example, highlighted portions of the appellant's court of appeals brief (which actually serve to unfairly extend the argument in appellant's jurisdictional memorandum).

Section 2(B)

This section has been amended to be consistent with Section 1.

Section 2(C)

This amendment is consistent with S. Ct. Prac. R. VIII, Section 2(A), and emphasizes the appellee's responsibility to obtain, and include on the cover of the memorandum in response, the Supreme Court case number.

Section 2(D)

This amendment clarifies current practice.

Section 3

Under this amendment, a jurisdictional memorandum may be supplemented only consistent with S. Ct. Prac. R. VIII, Section 7. Therefore, changes or additions to a jurisdictional memorandum must be made by refiling the memorandum, with the changes or additions incorporated, by the deadline for filing the original memorandum. After that deadline, a party may bring the Court's attention to authorities that were subsequently decided by another court by filing the citations to those authorities; additional briefing may not accompany the citations.

Section 4

The former rules permitted an appellee/cross-appellant to file only one jurisdictional memorandum. This memorandum, which was restricted to 15 pages, combined the appellee/cross-appellant's memorandum in response to the original appeal with a memorandum in support of a cross-appeal. On the other hand, the appellant/cross-appellee was permitted to file two separate jurisdictional memoranda, with up to 15 pages in each, to address the original appeal and the cross-appeal.

The amendment continues to require the appellee/cross-appellant to file just one jurisdictional memorandum. However, because this memorandum addresses both the original appeal and the cross-appeal, it may be up to 30 pages in length.

Section 5

This amendment permits the filing of jurisdictional memoranda by *amici* without leave of Court. An *amicus* memorandum is required to be filed by the deadline for filing imposed upon the party supported by the *amicus.*

RULE IV. CERTIFICATION BY COURT OF APPEALS BECAUSE OF CONFLICT

Section 1. Filing of Court of Appeals Order Certifying a Conflict.

When a court of appeals issues an order certifying a conflict pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution, any interested party to the proceeding may institute an appeal by filing a notice of certified conflict in the Supreme Court. The notice shall have attached a copy of the court of appeals order certifying a conflict and copies of the conflicting court of appeals opinions. The party who files the order certifying a conflict shall be considered the appellant. Failure to file the court of appeals order certifying a conflict within 30 days after the date of such order shall divest the Supreme Court of jurisdiction to consider the order certifying a conflict.

Section 2. Supreme Court Review of Court of Appeals Order Certifying a Conflict.

The Supreme Court will review the court of appeals order certifying a conflict. If the case involves termination of parental rights or adoption of a minor child, or both, the Supreme Court will expedite its review.

(A) If the rule of law upon which the alleged conflict exists is not clearly set forth in the order certifying a conflict, the Supreme Court may dismiss the case or remand it to the court of appeals with an order that the court of appeals clarify the issue presented.

(B) If the Supreme Court determines that a conflict does not exist, it will issue an order dismissing the case.

(C) If the Supreme Court determines that a conflict exists, it will issue an order finding a conflict, identifying those issues raised in the case that will be considered by the Supreme Court on appeal, and ordering those issues to be briefed.

Section 3. Briefs; Supplement to the Briefs.

(A) The appellant shall file a merit brief in conformance with S. Ct. Prac. R. VI and, if applicable, a supplement in conformance with S. Ct. Prac. R. VII, as follows:

(1) Within 20 days from the date the Clerk of the Supreme Court receives and files the record from the court of appeals, if the case involves termination of parental rights or adoption of a minor child, or both;

(2) Within 40 days from the date the Clerk of the Supreme Court receives and files the record from the court of appeals in every other appeal.

(B) The parties shall otherwise comply with the requirements of S. Ct. Prac. R. VI, VII, and VIII. In their merit briefs, the parties shall brief the issues identified in the order of the Supreme Court as issues to be considered on appeal.

Section 4. Effect of Pending Motion to Certify a Conflict Upon Discretionary Appeal or Claimed Appeal of Right Filed in Supreme Court.

(A) If a party has perfected a discretionary appeal or a claimed appeal of right with the Supreme Court in accordance with S. Ct. Prac. R. II, Section 2(A), but also has timely moved the court of appeals to certify a conflict in the case, that party shall file a notice with the Supreme Court that a motion to certify a conflict is pending in the court of appeals. The Supreme Court will stay consideration of the jurisdictional memoranda filed in the discretionary appeal or claimed appeal of right until the court of appeals has determined whether to certify a conflict in the case.

(B) If the court of appeals determines that a conflict does not exist, the party that moved the court of appeals to certify a conflict shall file a notice of that determination with the Supreme Court within 12 days after the date of the court of appeals entry. In accordance with S. Ct. Prac. R. III, the Supreme Court will consider the jurisdictional memoranda filed in the discretionary appeal or the claimed appeal of right.

(C) If the court of appeals certifies the existence of a conflict and a copy of the court of appeals order is filed with the Supreme Court in accordance with Section 1 of this rule, the Supreme Court will consolidate the certified conflict case with the discretionary appeal or the claimed appeal of right. The Supreme Court will review the court of appeals order certifying a conflict when it reviews the jurisdictional memoranda filed by the parties. In accordance with Section 2 of this rule and S. Ct. Prac. R. III, Section 6, the Supreme Court will issue an order determining both whether a conflict exists and whether to allow the discretionary appeal or the claimed appeal of right.

Staff Commentary to Rule IV
(April 1, 1996 Amendments)

Section 1
This amendment clarifies current practice.

Section 2
This amendment clarifies current practice.

Section 3
This amendment corrects a mistake in the former rules.

RULE V. TRANSMITTAL OF RECORD ON APPEAL

Section 1. Composition of the Record on Appeal.

In all appeals, the record on appeal shall consist of the original papers and exhibits to those papers; the transcript of proceedings and exhibits, along with a computer diskette of the transcript, if available; and certified copies of the journal entries and the docket prepared by the clerk of the court or other custodian of the original papers.

Section 2. When Record Is to Be Transmitted to Supreme Court from Court of Appeals.

In every case on appeal to the Supreme Court from a court of appeals, the clerk of the court of appeals or other custodian having possession of the record shall not transmit the record to the Supreme Court unless and until the Clerk of the Supreme Court issues an order to the custodian to transmit the record pursuant to Section 3 of this rule.

Section 3. Order of the Clerk to Certify and Transmit Record from Court of Appeals.

(A) Upon the filing of a notice of appeal from a court of appeals in an appeal of right, upon the allowance of a claimed appeal of right or a discretionary appeal, or upon determination by the Supreme Court of the existence of a conflict pursuant to S. Ct. Prac. R. IV, the Clerk of the Supreme Court shall issue an order to the clerk of the court of appeals or other custodian having possession of the record requiring transmittal of the duly certified record to the Clerk of the Supreme Court within 20 days. If the case involves termination of parental rights or adoption of a minor child, or both, preparation and transmittal of the record shall be expedited and given priority over preparation and transmittal of the record in other cases.

(B) The record shall be transmitted along with an index that lists all items included in the record. All exhibits listed in the index shall be briefly described. The clerk of the court of appeals or other custodian transmitting the record shall send a copy of the index to all counsel of record in the case. The Clerk of the Supreme Court shall notify counsel of record when the record is filed in the Supreme Court.

Section 4. Submission of Record from Public Utilities Commission.

The word "forthwith" as used in section 4903.21 of the Revised Code, providing that upon service or waiver of service of the notice of appeal the Public Utilities Commission shall forthwith transmit to the Clerk of the Supreme Court a complete transcript of the proceeding, shall mean a period of 30 days. If at the expiration of 30 days such transcript has not been filed, the appellant shall have an additional three days in which to request a writ of mandamus to

compel the Commission to file such transcript. If, at the expiration of 33 days, a transcript has not been filed or a writ of mandamus requested to compel the Commission to file such transcript, the appeal shall be dismissed.

Section 5. Items Not to Be Transmitted with the Record.

(A) Except in cases in which the death penalty has been affirmed by the court of appeals for an offense committed before January 1, 1995, or imposed by the court of common pleas for an offense committed on or after January 1, 1995, the custodian of the record shall not transmit the following items unless directed to do so by the Clerk of the Supreme Court:

(1) Any physical exhibits, other than videotapes and documents such as papers, maps, or photographs;

(2) Documents of unusual size, bulk, or weight.

(B) In cases in which the death penalty has been affirmed by the court of appeals for an offense committed before January 1, 1995, or imposed by the court of common pleas for an offense committed on or after January 1, 1995, the custodian of the record shall transmit the entire record, including all physical exhibits and all documents of unusual size, bulk, or weight.

(C) If exhibits or documents are not transmitted pursuant to division (A) of this section, the custodian who certifies the record shall designate in the index the exhibits or documents not being transmitted and identify the custodian of those exhibits or documents.

Section 6. Supplementation of the Record.

If any part of the record is not transmitted to the Supreme Court but is necessary to the Supreme Court's consideration of the questions presented on appeal, the Supreme Court, on its own initiative or upon stipulation of the parties or motion of a party, may direct that a supplemental record be certified and transmitted to the Clerk of the Supreme Court.

Section 7. Record in Death Penalty Cases.

In cases in which the death penalty has been imposed by the court of common pleas for an offense committed on or after January 1, 1995, the creation, transmission, supplementation, and correction of the record shall be governed by S. Ct. Prac. R. XIX.

Staff Commentary to Rule V
(April 1, 1996 Amendments)

Section 3

This amendment increases from 10 to 20 the number of days given to a court of appeals clerk to transmit a record to the Supreme Court. This change is intended to provide adequate time to the court of appeals clerk to prepare--for transmission with the record--an index of all of the items contained in the record.

Section 5(A) and (B)

These amendments reaffirm that all items in a record must be transmitted in a death penalty case, whether the case reaches the Supreme Court on appeal from the court of appeals or from the common pleas court.

Section 7

This amendment references new S. Ct. Prac. XIX, which addresses issues relating to the record in death penalty cases.

RULE VI. BRIEFS ON THE MERITS IN APPEALS

Section 1. Application of Rule.

Except as prescribed in S. Ct. Prac. R. XIX, Section 5(D), this rule does not apply to appeals regarding the imposition of the death penalty for an offense committed on or after January 1, 1995.

Section 2. Appellant's Brief.

(A) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant shall file a merit brief with the Supreme Court within 20 days from the date the Clerk of the Supreme Court receives and files the record from the court of appeals. In every other appeal, the appellant shall file a merit brief within 40 days from the date the Clerk receives and files the record from the court of appeals or the administrative agency. See Form F following these rules for a sample brief.

(B) The appellant's brief shall contain all of the following:

(1) A table of contents listing the table of authorities cited, the statement of facts, the argument with proposition or propositions of law, and the appendix, with references to the pages of the brief where each appears.

(2) A table of the authorities cited, listing the citations for all cases or other authorities, arranged alphabetically; constitutional provisions; statutes; ordinances; and departmental, board, commission, or other agency rules or regulations upon which appellant relies, with references to the pages of the brief where each citation appears.

(3) A statement of the facts with page references, in parentheses, to supporting portions of both the original transcript of testimony and any supplement filed in the case pursuant to S. Ct. Prac. R. VII.

(4) An argument, headed by the proposition of law that appellant contends is applicable to the facts of the case and that could serve as a syllabus for the case if appellant prevails. See

Drake v. Bucher, Supt. (1966), 5 Ohio St. 2d 37, at 39. If several propositions of law are presented, the argument shall be divided with each proposition set forth as a subheading.

(5) An appendix containing copies of all of the following:

(a) The date-stamped notice of appeal to the Supreme Court;

(b) The judgment or order from which the appeal is taken;

(c) All judgments, orders, and opinions rendered by any court or agency in the case, if relevant to the issues on appeal;

(d) The title page and relevant portions of any unreported opinions cited, together with the disposition by a superior appellate court of any appeal from the case discovered after diligent search;

(e) Any relevant rules or regulations of any department, board, commission, or any other agency, upon which appellant relies;

(f) Any constitutional provision, statute, or ordinance upon which appellant relies, to be construed, or otherwise involved in the case;

(g) In appeals from the Public Utilities Commission, the appellant's application for rehearing.

The pages of the appendix shall be numbered separately from the body of the brief.

(C) Except in appeals of right involving the death penalty, the appellant's brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, and the appendix.

(D) When multiple appeals are filed from a single decision of a court of appeals or an administrative agency and the appeals are docketed under separate case numbers, appellants may file a single brief for all appeals. The cover page of the brief shall contain the captions and numbers of each case.

Section 3. Appellee's Brief.

(A) In every appeal involving termination of parental rights or adoption of a minor child, or both, within 20 days after the filing of appellant's brief the appellee shall file a merit brief complying with the provisions in Section 2(B) of this rule, answering the appellant's contentions, and making any other appropriate contentions as reasons for affirmance of the order or judgment from which the appeal is taken. In every other appeal, the appellee shall file a merit brief within 30 days after the filing of appellant's brief. A statement of facts may be omitted from the appellee's brief if the appellee agrees with the statement of facts given in the appellant's merit brief. The appendix need not duplicate any materials provided in the appendix of the appellant's brief.

(B) Except in appeals of right involving the death penalty, the appellee's brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, and any appendix.

(C) If the case involves more than one appellant who file separate merit briefs, the appellee shall file only one merit brief responding to all of the appellants' merit briefs. The time for filing the appellee's brief shall be calculated from the date the last appellant's brief is filed.

Section 4. Appellant's Reply Brief.

(A) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant may file a reply brief within 15 days after the filing of appellee's brief. In every other appeal, the appellant may file a reply brief within 20 days after the filing of

appellee's brief. Except in appeals of right involving the death penalty, the reply brief shall not exceed 20 numbered pages, exclusive of the table of contents, the table of authorities cited, and any appendix.

(B) If the case involves more than one appellee who file separate merit briefs, the appellant shall file only one reply brief, if any, responding to all of the appellees' merit briefs. The time for filing the appellant's reply brief, if any, shall be calculated from the date the last appellee's brief is filed.

Section 5. Merit Briefs in Case Involving Cross-Appeal.

In a case involving a cross-appeal, each of the parties shall be permitted to file two briefs.

(A) First brief.

In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant/cross-appellee shall file the first merit brief within 20 days from the date the Clerk receives and files the record from the court of appeals. In every other appeal, the appellant/cross-appellee shall file the first merit brief within 40 days from the date the Clerk receives and files the record from the court of appeals or the administrative agency. Except in appeals of right involving the death penalty, this first brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, and the appendix.

(B) Second brief.

In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellee/cross-appellant shall file the second merit brief within 20 days after the filing of the first brief. In every other appeal, the appellee/cross-appellant shall file the second merit brief within 30 days after the filing of the first brief. The second brief shall be a combined brief containing both a response to the appellant/cross-appellee's brief and the propositions of law and arguments in support of the cross-appeal. Except in appeals of right involving the death penalty, the second brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, and the appendix.

(C) Third brief.

In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant/cross-appellee shall file the third merit brief within 20 days after the filing of the second brief. In every other appeal, the appellant/cross-appellee shall file the third merit brief within 30 days after the filing of the second brief. If the appellant/cross-appellee elects to file a reply brief in that party's appeal, the third brief shall be a combined brief containing both a reply and a response to the arguments in the cross-appeal. Otherwise, the third brief shall include only a response in opposition to the cross-appeal. Except in appeals of right involving the death penalty, the third brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, and any appendix.

(D) Fourth brief.

The fourth brief may be filed by the appellee/cross-appellant only as a reply brief in the cross-appeal. In every appeal involving termination of parental rights or adoption of a minor child, or both, if a fourth brief is filed, it shall be filed within 15 days after the filing of the third brief. In every other appeal, if a fourth brief is filed, it shall be filed within 20 days after the filing of the third brief. Except in appeals of right involving the death penalty, a fourth brief shall not exceed 20 numbered pages, exclusive of the table of contents, the table of authorities cited, and any appendix.

Section 6. Brief of *Amicus Curiae*.

(A) An *amicus curiae* may file a brief urging affirmance or reversal, and leave to file an *amicus* brief is not required. The brief shall conform to the requirements of this rule.

(B) The cover of an *amicus* brief shall identify the party on whose behalf the brief is being submitted or indicate that the brief does not expressly support the position of any parties to the appeal. If the cover of an *amicus* brief identifies an appellant as the party on whose behalf the brief is submitted, the brief shall be filed within the time for filing allowed to the appellant to file a merit brief, and the *amicus curiae* may file a reply brief within the time allowed to the appellant to file a reply brief. If the cover of an *amicus* brief does not identify an appellant as the party on whose behalf the brief is submitted, the brief shall be filed within the time for filing allowed to the appellee to file a merit brief. The Clerk shall refuse to file an *amicus* brief that is not submitted timely.

Section 7. Consequence of Failure to File Briefs.

If the appellant fails to file a merit brief within the time provided by this rule or as extended in accordance with S. Ct. Prac. R. XIV, Section 3, the Supreme Court may dismiss the appeal. If the appellee fails to file a merit brief within the time provided by this rule or as extended in accordance with S. Ct. Prac. R. XIV, Section 3, the Supreme Court may accept the appellant's statement of facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain reversal.

Staff Commentary to Rule VI
(April 1, 1996 Amendments)

Section 1

The language of this amendment is self-explanatory.

Section 2(A)

The amendment references new Rule XIX which addresses death penalty cases. It clarifies the current understanding that the appendix filed with appellee's brief need not duplicate materials provided with the appellant's brief.

Section 2(C)

This amendment clarifies current practice.

Section 3(B)

This amendment clarifies current practice.

Section 7

In *State ex rel. Montgomery v. R & D Chem. Co.* (1995), 72 Ohio St. 3d 202, the Court noted that, since appellee had failed to file a timely merit brief, it was "tempted to borrow from App. R. 18(C) and find that the facts, issues and assertions properly set forth in appellants' brief, when accepted as correct, reasonably appear to sustain a reversal of the judgment of the court of appeals." *Id*. at 204. This amendment incorporates the essential provisions of App. R. 18(C) to cover the filing of briefs in appeals to the Supreme Court.

The amendment has the beneficial effects of both giving the Court another tool with which to "sanction" parties for failing to file a merit brief and allowing possible reversal, "if appellant's brief reasonably appears to sustain" it, when appellee fails to file a merit brief. Briefs serve the important function of narrowing and sharpening the parties' arguments to the Court. If the parties are aware that their failure to file briefs might result in an adverse judgment on the merits, they might possess more incentive to file timely merit briefs. Further, since the amendment only makes the "sanctions" (dismissal or reversal) discretionary with the Court, the Court is still empowered to decide cases on their merits without resort to these sanctions where "fairness and justice" require. *Hawkins v. Marion Correctional Inst.* (1986), 28 Ohio St. 3d 4.

RULE VII. SUPPLEMENT TO THE BRIEFS

Section 1. Duty of Appellant to Prepare and File; Content.

(A) In every civil case on appeal to the Supreme Court from a court of appeals or an administrative agency, the appellant shall prepare and file a supplement to the briefs that contains only those portions of the record necessary to enable the Supreme Court to determine the questions presented. Documents not necessary to determine the questions presented shall not be included in the supplement. Documents that should generally be excluded from the supplement include memoranda of law filed in the courts below, summonses, extraneous pleadings, extraneous exhibits, and rulings on unrelated issues. The fact that parts of the record are not included in the supplement shall not prevent the parties or the Supreme Court from relying on those parts. Parties to an appeal are encouraged to consult and agree on the contents of the supplement to minimize the appellee's need for filing a second supplement.

(B) If the appellant determines that no portion of the record is necessary for the Supreme Court to determine the questions presented, and that preparation of a supplement is therefore unwarranted, the appellant may file a notice of intention not to file a supplement. The notice shall be filed by the deadline for filing the supplement.

Section 2. Time for Filing Supplement.

The appellant shall file the supplement with the appellant's merit brief.

Section 3. Filing of a Second Supplement by Appellee.

Within the time limit for filing the appellee's merit brief, the appellee may file a second supplement to the merit briefs in the manner required by Section 1 of this rule. A second supplement shall not unnecessarily duplicate documents contained in the original supplement.

Section 4. Pagination and Indexing of Supplement.

(A) The pages of the supplement shall be consecutively numbered in the bottom right hand corner.

(B) In any copy of testimony filed in the supplement, the beginning of any page of the original transcript should be indicated by the page number in parentheses.

(C) The supplement shall include an index that lists all items included in the supplement and references the page numbers at which each item can be located.

Section 5. Cost of Copies of Supplement.

The cost of any copies of portions of the record filed as a supplement pursuant to this rule may be taxed as costs in the case. The party incurring the cost for copies of portions of the record shall file a receipt that clearly indicates the number of copies made and the per page cost of the copies. The receipt shall be filed before the Supreme Court decides the merits of the case. If a prevailing party has created or incurred unnecessary costs, caused unnecessary matter to be included in the supplement, printed an excessive number of copies, or failed to file a detailed receipt prior to the Supreme Court's determination on the merits, the Supreme Court may refuse to tax the costs to the losing party.

Staff Commentary to Rule VII
(April 1, 1996 Amendments)

Section 1(B)

This amendment recognizes that there may be cases that involve only legal issues where there may be no need to file a supplement. The appellant may instead file a notice of intention not to file a supplement.

Section 4

The former rules provided that a supplement not exceeding 100 pages may be attached to the filing party's merit brief. This amendment strikes that provision, such that the supplement must be filed separately from the merit brief. This will reduce the confusion that results when the number of copies of a supplement required to be filed differs from the number of copies of a merit brief required to be filed. See Rule VIII, Section 5. It will also make it easier for the Clerk's Office to review, file, and docket supplements and briefs if they are submitted separately.

Section 5

This amendment requires that the receipt for copies of portions of the record provide itemized information. The detail on the receipt will enable the Court to determine whether costs of those copies should be taxed in the case.

RULE VIII. REQUIREMENTS AS TO FORM AND NUMBER OF DOCUMENTS FILED

Section 1. Scope of Rule.

This rule sets forth the requirements as to the form and number of all documents filed in the Supreme Court.

Section 2. Cover Page.

The cover page of each document filed in the Supreme Court shall be white and shall contain all of the following:

(A) The case caption and the case number assigned when the case was filed in the Supreme Court;

(B) The nature of the proceeding in the Supreme Court (e.g., appeal, original action in mandamus, etc.);

(C) If the proceeding is an appeal, the name of the court or the administrative agency from which the appeal is taken;

(D) The title of the document (e.g., notice of appeal, appellant's merit brief, memorandum in support of jurisdiction, etc.);

(E) An identification of the party on whose behalf the document is filed;

(F) The name, attorney registration number, address, telephone number, and facsimile number, if available, of each attorney who has filed an appearance in the case; an indication as to what party each attorney represents; and, where two or more attorneys represent a party, a designation of counsel of record. A party who is not represented by an attorney shall indicate his or her name, address, and telephone number.

Section 3. Signature.

The original of every pleading, memorandum, brief, or other document filed in the Supreme Court shall be signed by an attorney representing the party on whose behalf the document is filed. A party who is not represented by an attorney shall sign the document being filed.

Section 4. Mechanical Requirements.

(A) (1) Every original document filed with the Supreme Court shall be typewritten or typeset (by a standard typographic, word processing, or desktop process) and shall comply with the requirements of this rule. A medium weight, noncondensed Roman type style is preferred, and italic type style may be used only for case citations and emphasis. The Clerk may accept a handwritten document for filing only in an emergency, provided the document is clearly legible.

(2) All documents shall be on opaque, unglazed white paper, 8 1/2 by 11 inches in size, and shall be firmly stapled or bound on the left margin. All margins shall be at least one inch, and the left margin shall be justified. Documents shall not be enclosed in notebooks or binders and shall not have plastic cover pages.

(3) (a) The text of all typed documents shall be in 10-pitch, double-spaced type. The text of all documents prepared by word processor shall be in 12-point, double-spaced noncondensed type. As used in this provision, "noncondensed type" shall refer either to Times New Roman type or to another type that has no more than 80 characters to a line of text. Footnotes and quotations may be single-spaced.

(b) The text of other typeset documents shall be in 12-point type with 24-point leading and no more than 80 characters to a line of text. Footnotes and quotations may be in 10-point to 12-point type, with 2-point leading.

(B) Whenever these rules require that a copy of the court or agency opinion or decision being appealed be attached to a document filed with the Supreme Court, the copy shall be either of the following:

(1) a photocopy of the opinion or decision issued directly by the court or agency;

(2) an electronically generated copy that meets the requirements of division (A)(3)(a) of this section.

(C) Any supplement to the briefs filed pursuant to S. Ct. Prac. R. VII may be prepared and reproduced by photocopying the relevant documents in the record, even if those documents do not comply with the mechanical requirements of division (A) of this section, provided that the requirements as to paper size and paper type are met and each page of the supplement is clearly legible. Both sides of the paper may be used in preparing a supplement.

(D) Any document filed with the Supreme Court that exceeds two inches in thickness shall be bound and numbered in two or more parts.

Section 5. Number and Form of Copies.

(A) The original of a pleading, memorandum, brief, motion, or other document filed in the Supreme Court shall be accompanied by an appropriate number of copies as follows:

(1) Notice of appeal or cross-appeal - 1;

(2) Praecipe filed in a death penalty appeal - 1;

(3) Jurisdictional memorandum - 10;

(4) Brief in an appeal or an original action - 18;

(5) List of additional authorities filed pursuant to S. Ct. Prac. R. IX, Section 7 - 18;

(6) Supplement to a merit brief filed pursuant to S. Ct. Prac. R. VII - 2;

(7) Complaint in an original action - 12, plus an additional copy for each respondent named in the complaint;

(8) Request for extension of time or stipulation to an agreed extension of time to file a brief - none;

(9) Any other pleading, memorandum, motion, or document - 12.

(B) Any party wishing to receive a date-stamped copy of a document submitted for filing with the Clerk shall provide the Clerk with an extra copy of the document and a self-addressed, postage-paid envelope.

(C) Copies of documents shall be on opaque (e.g., 20 pound or heavier), unglazed white paper, 8 1/2 by 11 inches in size, and shall be firmly stapled or bound on the left margin. Both sides of the paper may be used as long as the document is clearly legible. The use of recycled paper is encouraged. To facilitate recycling of paper after copies are disposed of by the Supreme Court, the parties shall use staples or other bindings that can be removed readily. Copies shall not be enclosed in notebooks or binders and shall not have plastic cover pages.

Section 6. Rejection of Noncomplying Originals and Copies.

The Clerk may reject the original and all copies of a document tendered for filing unless the original and each of the required number of copies are clearly legible and comply with the requirements of these rules.

Section 7. Corrections or Additions to Previously Filed Documents.

A party who wishes to make corrections or additions to a previously filed document shall file a revised document and copies that completely incorporate the corrections or additions. The revised document shall be filed within the time permitted by these rules for filing the original document. Time permitted by these rules for filing any responsive document shall begin to run when the revised document is filed. The Clerk shall refuse to file a revised document that is not submitted in the form and within the deadlines prescribed by this rule.

Staff Commentary to Rule VIII
(April 1, 1996 Amendments)

Section 4(A)(1) and (3)

Most documents filed in the Supreme Court are prepared using a word processor. The former rules required that the text of documents prepared on a word processor be in 12-point type. This requirement spoke to the height of the characters in the text and provided an objective standard for determining text height. The former rules also provided that a "noncondensed" type style was "preferred". This language referred to the width of the characters in the text. However, because "noncondensed" was not defined, the language did not provide an objective standard for determining whether too many characters are compressed into one line of type. In addition, the language did not mandate the use of a noncondensed type; it merely indicated that a noncondensed type style was "preferred". As a result, some documents that were filed in the Clerk's Office contained compressed text that was difficult to read. In addition, some attorneys may have deliberately used a compressed type style so they could insert more material into a brief or memo that has a page restriction.

The amendment requires that there be no more than 80 characters of type to a line of text, thereby providing an objective standard that can be checked to determine whether the type used in a document is too condensed. This standard is consistent with what most attorneys currently use with documents filed in the Court.

Section 4(A)(2)

This amendment clarifies current practice.

Section 5(B)

This amendment clarifies current practice.

RULE IX. ORAL ARGUMENT

Section 1. Cases in Which Oral Argument Will Be Scheduled.

(A) Appeals from Other Courts.

Oral argument in the following cases will be scheduled and heard after the case has been briefed on the merits in accordance with S. Ct. Prac. R. VI or XIX:

(1) If the appeal is an appeal of right that involves affirmance of the death penalty by the court of appeals for an offense committed prior to January 1, 1995, or the imposition of the death penalty by a court of common pleas for an offense committed on or after January 1, 1995;

(2) If the appeal is a discretionary appeal that is allowed by the Supreme Court pursuant to S. Ct. Prac. R. III;

(3) If the appeal is a claimed appeal of right that is not determined summarily by the Supreme Court pursuant to S. Ct. Prac. R. III;

(4) If the appeal is filed pursuant to S. Ct. Prac. R. IV and the Supreme Court determines the existence of a conflict certified to it by a court of appeals in accordance with that rule.

(B) Appeals from Administrative Agencies.

In an appeal from the Board of Tax Appeals, the Public Utilities Commission, or the Power Siting Board, oral argument will be scheduled and heard after the case has been briefed on the merits in accordance with S. Ct. Prac. R. VI.

Section 2. Oral Argument in Cases Not Scheduled for Argument.

(A) In an original action, a certified state law case instituted under S. Ct. Prac. R. XVIII, or an appeal that is not scheduled for oral argument pursuant to Section 1 of this rule, the Supreme Court may order oral argument on the merits either *sua sponte* or in response to a request by any party.

(B) A request for oral argument on the merits shall be in writing and filed no later than 20 days after the filing of appellee's or respondent's merit brief.

Section 3. Waiver of Oral Argument.

(A) Any party who is entitled to oral argument pursuant to Section 1 of this rule may waive oral argument and submit the case to the Supreme Court on the briefs. A waiver of oral argument shall be in writing and filed at least seven days before the date scheduled for the oral argument.

(B) Any party who fails to file a merit brief pursuant to S. Ct. Prac. R. VI, Section 2 or Section 3, shall be deemed to have waived oral argument.

(C) If not all parties to a case waive oral argument, the oral argument shall be heard and the party or parties not waiving shall be permitted to argue.

(D) If an appellant entitled to oral argument neither waives oral argument pursuant to this rule nor appears at the argument, the Supreme Court may dismiss the case for lack of prosecution.

Section 4. Scheduling of Oral Argument in Certain Cases.

If a case that involves termination of parental rights or adoption of a minor child, or both, is scheduled for oral argument, it shall be scheduled at the earliest practicable time.

Section 5. Time for Oral Argument.

(A) In cases involving affirmance or imposition of the death penalty, 30 minutes shall be allotted to each side for oral argument on the merits. In all other cases scheduled for oral argument, 15 minutes shall be allotted to each side for argument on the merits.

(B) In a case involving a cross-appeal, the cross-appeal shall be argued with the initial appeal at a single argument, unless the Supreme Court directs otherwise.

(C) Either *sua sponte* or upon good cause shown, the Supreme Court may vary the time for oral argument permitted by this section.

(D) Counsel for the appellant or the relator may open and close the argument and divide the time allotted at his or her discretion.

Section 6. Oral Argument by *Amicus Curiae*.

(A) No time for oral argument shall be allotted to counsel who have filed *amicus curiae* briefs. However, with leave of the Supreme Court and the consent of counsel for the side whose position the *amicus curiae* supports, counsel for the *amicus curiae* may present oral argument within the time allotted to that side. If an *amicus curiae* wishes to participate in oral argument but either does not receive the consent of counsel for the side whose position the *amicus curiae* supports or does not expressly support the position of any parties to the case, the *amicus curiae* may seek leave from the Supreme Court to participate in oral argument, but such leave will be granted only in the most extraordinary circumstances.

(B) A motion of *amicus curiae* for leave to participate in oral argument shall be in writing and filed at least 10 days before the date scheduled for the oral argument.

Section 7. Reference of Certain Cases to Master Commissioner for Oral Argument.

(A) Every case on appeal from the Board of Tax Appeals shall be referred to a regular or special master commissioner for oral argument unless the parties waive the argument or the Supreme Court, *sua sponte* or upon request, decides to hear the argument itself. A request for the Supreme Court to hear oral argument shall be in writing and shall be filed within 20 days after the filing of appellee's brief.

(B) The Supreme Court may refer any other matter scheduled for oral argument to a regular or special master commissioner for argument.

Section 8. List of Additional Authorities Relied Upon During Oral Argument.

A party who intends to rely during oral argument on authorities not cited in the merit briefs shall file a list of citations to those authorities no fewer than seven days before oral argument. If an authority is not published, a copy of the authority shall be attached to the list of citations.

Section 9. Prohibition Against Additional Briefing After Oral Argument.

Unless ordered by the Supreme Court, the parties shall not tender for filing and the Clerk shall not file any additional briefs or other materials relating to the merits of the case after the case has been orally argued.

Staff Commentary to Rule IX
(April 1, 1996 Amendments)

Section 3(B)

This amendment clarifies current practice.

RULE X. ORIGINAL ACTIONS

Section 1. Application of Rule.

(A) This rule applies only to actions, other than habeas corpus, within the original jurisdiction of the Supreme Court under Article IV, Section 2 of the Ohio Constitution. The following Revised Code chapters also are applicable: Mandamus, R.C. Chapter 2731.; Quo Warranto, R.C. Chapter 2733.

(B) Habeas corpus actions shall be brought and proceed in accordance with R.C. Chapter 2725.

Section 2. Form and Procedure.

Unless these rules provide otherwise, the form of pleadings and motions prescribed by the Ohio Rules of Civil Procedure shall be followed in original actions filed in the Supreme Court. All original actions shall proceed under the Ohio Rules of Civil Procedure, unless clearly inapplicable.

Section 3. Parties.

The party filing an action in mandamus, prohibition, procedendo, or quo warranto shall be referred to as the relator. The party named in an original action shall be referred to as the respondent.

Section 4. Institution of Original Action.

(A) An original action shall be instituted by the filing of a complaint, which shall contain the name, title, and address of the respondent. The Clerk of the Supreme Court shall issue a summons and serve the summons and a copy of the complaint by certified mail sent to the address of the respondent as indicated on the complaint. The summons shall inform the respondent of the time permitted to respond to the complaint pursuant to Section 5 of this rule.

(B) All complaints shall contain a specific statement of facts upon which the claim for relief is based, shall be supported by an affidavit of the relator or counsel specifying the details of the claim, and may be accompanied by a memorandum in support of the writ. All relief sought, including the issuance of an alternative writ, shall be set forth in the complaint.

Section 5. Response to Complaint; Court Action.

The respondent shall file an answer to the complaint or a motion to dismiss within 21 days of service of the summons and complaint. The respondent may file a motion for judgment on the pleadings at the same time an answer is filed. After the time for filing an answer to the complaint or a motion to dismiss, the Supreme Court will either dismiss the case or issue an alternative or a peremptory writ, if a writ has not already been issued.

Section 6. Alternative Writs.

When an alternative writ is issued, the Supreme Court will issue a schedule for the presentation of evidence and the filing and service of briefs or other pleadings. Unless the Supreme Court orders otherwise, issuance of an alternative writ in a prohibition case stays proceedings in the action sought to be prohibited until final determination of the Supreme Court. See S*tate ex rel. Hughes v. Brown* (1972), 31 Ohio St. 2d 41, at 43.

Section 7. Presentation of Evidence.

To facilitate the consideration and disposition of original actions, counsel, when possible, should submit an agreed statement of facts to the Supreme Court. All other evidence shall be submitted by affidavits, stipulations, depositions, and exhibits.

Section 8. Merit Briefs.

All merit briefs shall conform to the requirements set forth in S. Ct. Prac. R. VI and VIII, to the extent those rules are applicable.

Section 9. Expedited Election Matters.

Because of the necessity of a prompt disposition of an original action relating to a pending election, and in order to give the Supreme Court adequate time for full consideration of the case, if the action is filed within 90 days prior to the election, the respondent shall file a response to the complaint within five days after service of the summons. Unless otherwise ordered by the Supreme Court, relator shall file any evidence and a merit brief in support of the complaint within three days following the response, respondent shall file any evidence and a merit brief within three days after the filing of relator's merit brief, and relator may file a reply brief within three days after the filing of respondent's merit brief.

Section 10. Expedited Adoption/Termination of Parental Rights Matters.

If the original action involves termination of parental rights or adoption of a minor child, or both, the respondent shall file a response to the complaint within 15 days after service of the summons. After the time for filing a response to the complaint, the Supreme Court will decide on an expedited basis whether to dismiss the case or issue an alternative or a peremptory writ, if a writ has not already been issued.

Section 11. Reference to a Master Commissioner.

The Supreme Court may refer original actions to a master commissioner for hearing and argument.

Section 12. Dismissal for Want of Prosecution and Consequence of Respondent's Failure to File Merit Brief.

Unless all evidence is presented and the relator's brief is filed within the schedule issued by the Supreme Court, an original action shall be dismissed for want of prosecution. If the respondent fails to file a merit brief within the time provided by this rule or as ordered by the Supreme Court, the Supreme Court may accept the relator's statement of facts and issues as correct and grant the writ if relator's brief reasonably appears to sustain the writ.

Staff Commentary to Rule X

(April 1, 1996 Amendments)

Section 4

The amendment clarifies that the rule allows an affidavit of relator's counsel as to those specific facts supporting the claim for relief which are in counsel's personal knowledge rather than the personal knowledge of relator.

Section 5

This amendment lengthens the time for filing a responsive pleading in an original action filed in the Court. The previous 14-day limit was thought to afford too brief a response period.

The rule has also been amended to allow the respondent to file a motion for judgment on the pleadings at the same time respondent files an answer. This permits the respondent to provide the Court with a legal argument opposing the grant of a peremptory writ while retaining the right to file an answer. The respondent may still choose to file a motion to dismiss rather than an answer.

Section 6

The amendment makes express what is often a matter of confusion--that an alternative writ of prohibition does stay the underlying proceedings in prohibition, unless otherwise ordered by the Supreme Court.

Section 9

In an expedited election case under the former rules, the Court was required to make a determination promptly under S. Ct. Prac. R. X, Section 5. This virtually always resulted in the grant of an alternative writ and an expedited schedule for the presentation of evidence and briefs. Since the Court usually grants alternative writs in expedited election cases, this amendment returns to the practice in the pre-1994 rules and incorporates into the rule itself an expedited schedule for the presentation of evidence and briefs.

Section 11

This amendment is similar to new Section 6 of S. Ct. Prac. R. VI. See staff commentary to Rule VI.

RULE XI. ENTRY OF SUPREME COURT JUDGMENT; MOTIONS FOR RECONSIDERATION AND FOR REOPENING; ISSUANCE OF MANDATE

Section 1. Entry of Judgment.

The filing of a judgment entry or other order by the Supreme Court with the Clerk for journalization constitutes entry of the judgment or order. A Supreme Court judgment entry or other order is effective when it is filed with the Clerk. In every case involving termination of parental rights or adoption of a minor child, or both, the Supreme Court will expedite the filing of the judgment entry or other orders for journalization.

Section 2. Motion for Reconsideration.

(A) A motion for reconsideration may be filed within 10 days after the Supreme Court's judgment entry or order is filed with the Clerk. A motion for reconsideration shall be confined strictly to the grounds urged for reconsideration, shall not constitute a reargument of the case, and may be filed only with respect to the following:

(1) The Supreme Court's refusal to grant jurisdiction to hear a discretionary appeal;

(2) The *sua sponte* dismissal of a case;

(3) The granting of a motion to dismiss;

(4) A decision on the merits of a case.

(B) An *amicus curiae* may not file a motion for reconsideration without prior leave of the Supreme Court.

(C) The Clerk shall refuse to file a motion for reconsideration that is not expressly permitted by this rule or that is not timely.

Section 3. Memorandum Opposing Motion for Reconsideration.

(A) A party opposing reconsideration may file a memorandum opposing a motion for reconsideration within seven days of the filing of the motion.

(B) An *amicus curiae* may not file a memorandum opposing a motion for reconsideration without prior leave of the Supreme Court.

Section 4. Issuance of Mandate.

(A) After the Supreme Court has decided an appeal on the merits, the Clerk shall issue a mandate in conformity with the Supreme Court's judgment entry. The mandate shall be issued 10 days after entry of the judgment, unless a motion for reconsideration is filed within that time in accordance with Section 2 of this rule.

(1) If a motion for reconsideration is timely filed but denied, the mandate shall be issued when the Supreme Court files with the Clerk its order denying the motion for reconsideration.

(2) If a motion for reconsideration is timely filed and granted, a mandate shall be issued in conformity with the Supreme Court's judgment entry on reconsideration and at the time that judgment entry is filed with the Clerk.

(B) No mandate shall be issued on the Supreme Court's refusal to grant jurisdiction to hear a discretionary appeal or the dismissal of a claimed appeal of right as not involving a substantial constitutional question.

Section 5. Application for Reopening.

(A) An appellant in a death penalty case involving an offense committed on or after January 1, 1995, may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel in the Supreme Court. An application for reopening shall be filed within 90 days from entry of the judgment of the Supreme Court, unless the appellant shows good cause for filing at a later time.

(B) An application for reopening shall contain all of the following:

(1) The Supreme Court case number in which reopening is sought and the trial court case number or numbers from which the appeal was taken;

(2) A showing of good cause for untimely filing if the application is filed more than 90 days after entry of the judgment of the Supreme Court;

(3) One or more propositions of law or arguments in support of propositions of law that previously were not considered on the merits in the case or that were considered on an incomplete record because of the claimed ineffective representation of appellate counsel;

(4) An affidavit stating the basis for the claim that appellate counsel’s representation was ineffective with respect to the propositions of law or arguments raised pursuant to division (B)(3) of this section and the manner in which the claimed deficiency prejudicially affected the outcome of the appeal, which affidavit may include citations to applicable authorities and references to the record;

(5) Any parts of the record available to the applicant and all supplemental affidavits upon which the applicant relies.

(C) Within 30 days from the filing of the application, the attorney for the prosecution may file and serve affidavits, parts of the record, and a memorandum of law in opposition to the application.

(D) An application for reopening and an opposing memorandum shall not exceed 10 pages, exclusive of affidavits and parts of the record. Oral argument of an application for reopening shall not be permitted except at the request of the Supreme Court.

(E) An application for reopening shall be granted if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal.

(F) If the Supreme Court grants the application, the Clerk shall serve notice on the clerk of the trial court, and the Supreme Court will do both of the following:

(1) Appoint counsel to represent the applicant if the applicant is indigent and not currently represented;

(2) Impose conditions, if any, necessary to preserve the status quo during the pendency of the reopened appeal.

(G) If the application is granted, the case shall proceed as on an initial appeal in accordance with these rules except that the Supreme Court may limit its review to those propositions of law and arguments not previously considered. The time limits for preparation and transmission of the record pursuant to S. Ct. Prac. R. XIX shall run from entry of the order granting the application. The parties shall address in their briefs the claim that representation by prior appellate counsel was deficient and that the applicant was prejudiced by that deficiency.

(H) If the Supreme Court determines that an evidentiary hearing is necessary, the evidentiary hearing may be conducted by the Supreme Court or referred to a master commissioner.

(I) If the Supreme Court finds that the performance of appellate counsel was deficient and the applicant was prejudiced by that deficiency, the Supreme Court shall vacate its prior judgment and enter the appropriate judgment. If the Supreme Court does not so find, it shall issue an order confirming its prior judgment.

Staff Commentary to Rule XI
(April 1, 1996 Amendments)

Sections 1 and 2(A)

Under the former rules, the time for filing a motion for reconsideration began to run when the Court announced its decision. The date appearing on the Court's entry of decision and the date of announcement of the decision were generally (but not always) the same. This date was assumed to be the effective date of the decision, although the rules did not address the issue of when a Court action was effective.

The amendments, drafted to reduce confusion, provide that a Court entry (whether a judgment entry or any other Court order) is effective when it is filed in the Clerk's Office. They also provide that the time for reconsideration begins to run on the date the entry is filed in the Clerk's Office. Pursuant to these amendments, when a signed entry is received in the Clerk's Office, the entry will be file-stamped with that day's date. The file stamp date will be recorded on the docket, will become the effective date of the order, will appear on copies of the order that are sent to all

counsel of record in the case, and, if the order is the final decision in the case, will begin the start of the 10-day period for requesting reconsideration.

Former Section 2(B)

The former rules provided a mechanism for obtaining delayed reconsideration of a case to claim ineffective assistance of counsel at the Supreme Court level. *State v. Buell* (1994), 70 Ohio St. 3d 1211, was decided after the former rules became effective. In that case, the Supreme Court held that, because there is no constitutional right to counsel on a second appeal, there is no constitutional right to effective assistance of counsel on the second appeal (i.e., an appeal to the Supreme Court). For this reason, these amendments strike the provision in former Section 2(B) for delayed motion for reconsideration to claim ineffective assistance of Supreme Court counsel.

Section 3(B)

The former rules provided that an *amicus* could not file a motion for reconsideration without prior leave of Court. They arguably implied that an *amicus* also could not file a memorandum opposing a motion for reconsideration without prior leave of Court. The amendment makes this express.

Section 4

The amendments in this section are adopted to be consistent with the amendments to Sections 1 and 2(A).

Section 5

In a case in which the death penalty is imposed for an offense committed on or after January 1, 1995, the appellant will be entitled to only one appeal--the appeal to the Supreme Court--and therefore will be entitled to effective assistance of counsel at the Supreme Court level. Cf. *State v. Buell* (1994), 70 Ohio St.3d 1211, and see staff commentary to Sections 1 and 2(A) of this rule. This amendment provides a procedure for claiming ineffective assistance of Supreme Court counsel after the Supreme Court case has been decided on the merits. It is based upon App. R. 26(B), with modifications appropriate to the Supreme Court.

RULE XII. DISPOSITION OF APPEAL IMPROVIDENTLY ALLOWED

When, upon consideration of a case allowed pursuant to S. Ct. Prac. R. III for determination on the merits, the Supreme Court finds that there is no substantial constitutional question or question of public or great general interest, or that the same question has been raised and passed upon in a prior appeal, the Supreme Court may *sua sponte* dismiss the appeal as having been improvidently allowed or summarily reverse or affirm on the basis of precedent. If the Supreme Court dismisses an appeal as having been improvidently allowed, the parties shall bear their own costs in the case.

Staff Commentary to Rule XII
(April 1, 1996 Amendments)

Currently, the costs of a case are generally taxed to the losing party. If the Court allows an appeal but later dismisses the appeal as having been improvidently allowed, the appellant is considered the losing party and is therefore taxed the costs in the case. Since the Court was at one time inclined to hear the appellant's case on the merits, this amendment requires the parties to bear their own costs when a case is dismissed as improvidently allowed.

RULE XIII. RETURN OF RECORD

After the mandate has been issued in a case on appeal, the Clerk of the Supreme Court shall return the record to the clerk of the proper court or other custodian of the record.

RULE XIV. GENERAL PROVISIONS

Section 1. Filing with the Supreme Court.

(A) Filing Defined.

The filing of memoranda, briefs, pleadings, notices, and other documents with the Supreme Court as required by these rules shall be made by filing with the Clerk of the Supreme Court during the regular business hours of the Clerk's Office. Documents received in the Clerk's Office after 5:00 p.m. shall not be filed until the next business day. Only submissions filed in accordance with this provision will be considered by the Supreme Court. Filing may be made in person or by mail addressed to the Clerk, but documents filed by mail shall not be considered filed until received in the Clerk's Office.

(B) Filing by Facsimile Transmission.

(1) The following documents also may be filed by facsimile transmission to the Clerk:

(a) A request for extension of time or a stipulation to an agreed extension of time that complies with Section 3 of this rule;

(b) A list of additional authorities submitted in accordance with S. Ct. Prac. R. IX;

(c) A notice of dismissal;

(d) A waiver of oral argument.

(2) Each facsimile transmission shall be accompanied by a cover page that states all of the following:

(a) The date of transmission;

(b) The name, telephone number, and facsimile number of the person transmitting the document;

(c) The case number and caption of the case in which the document is to be filed;

(d) The title of the document to be filed;

(e) The number of pages being transmitted.

See Form G following these rules for a form that may be used as a facsimile transmission cover page.

(3) Only one copy of the document shall be transmitted. The Clerk shall provide any additional copies required to be filed by these rules. The person filing a document by facsimile transmission shall retain the original document and make it available upon request of the Supreme Court.

(4) Documents transmitted by facsimile transmission and received in the Clerk's Office on a Saturday, Sunday, legal holiday, or after 5:00 p.m. on a business day shall be considered filed on the next business day.

(5) If possible, service of a copy of the document to be filed by facsimile transmission shall also be accomplished by facsimile transmission. If service by facsimile transmission is not possible, the party filing the document by facsimile transmission shall attempt to notify the other parties by telephone that the document is being filed by facsimile transmission, and service shall be accomplished as authorized by Section 2 of this rule.

(C) Prohibition Against Untimely Filings.

No pleading, memorandum, brief, or other document may be filed after the filing deadlines imposed by these rules or as extended in accordance with Section 3(B)(2) of this rule or with S. Ct. Prac. R. XIX. The Clerk shall refuse to file a pleading, memorandum, brief, or other document that is not timely tendered for filing. Motions to waive this rule are prohibited and shall not be filed.

Section 2. Service of Documents; Notice When Documents Are Rejected for Filing.

(A) Service Requirement.

When an attorney or a party files any document with the Clerk, except a complaint filed to institute an original action, that attorney or party shall also serve a copy of the document on all other parties to the case. Service on a party represented by counsel shall be made on counsel. In a case involving a felony, when a county prosecutor files a notice of appeal under S. Ct. Prac. R. II or an order certifying a conflict under S. Ct. Prac. R. IV, the county prosecutor shall also serve a copy of the notice or order on the Ohio Public Defender.

(B) Manner of Service.

Service may be personal, by mail, or by facsimile transmission, provided that service of a notice of appeal or cross-appeal from a decision of the Board of Tax Appeals shall be made by certified mail. Personal service includes delivery of the copy to counsel or to a responsible person at the office of counsel and is complete upon delivery. Service by mail is complete on mailing. Service of a document may be made by facsimile transmission only if the person to be served has consented to receive service of the document by facsimile transmission. Personal or facsimile transmission service made after 5:00 p.m. shall be considered complete on the next business day.

(C) Proof of Service.

All documents presented for filing with the Clerk, except complaints filed to institute an original action, shall contain a proof of service. Proof of service shall state the date and manner of service, identify the names of the persons served, and be signed by the attorney or the party who files the document. The proof of service for a document served by facsimile transmission also shall state the facsimile number of the person to whom the document was transmitted. The Clerk shall refuse to accept for filing any document that does not contain a proof of service, unless these rules require that the document be served by the Clerk.

(D) Failure to Provide Service.

(1) When an attorney or a party fails to provide service upon another party or parties to the case in accordance with division (A) of this section, any party adversely affected may file a motion to strike the document that was not served. Within 10 days after a motion to strike is filed, the party against whom the motion is filed may file a memorandum opposing the motion.

(2) If the Supreme Court determines that service was not made as required by this rule, it may strike the document or, if the interests of justice warrant, order that the document be served and impose a new deadline for filing any responsive document. If the Supreme Court determines that service was made as required by this rule or that service was not made but the movant was not adversely affected, it may deny the motion.

(E) Notice to Other Parties When Document Is Rejected for Filing.

If a document presented for filing is rejected by the Clerk under these rules, the attorney or party who presented the document for filing shall promptly notify all of the parties served with a copy of the document that the document was not filed in the case.

Section 3. Computation and Extension of Time.

(A) Computation of Time.

In computing any period of time prescribed or allowed by these rules or by an order of the Supreme Court, the day of the act from which the designated period of time begins to run shall not be included and the last day of the period shall be included. If the last day of the period is a Saturday, Sunday, or legal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the Clerk's Office of the Supreme Court is closed to the public for the entire day that constitutes the last day for doing an act, or before the usual closing time on that day, then that act may be performed on the next day that is not a Saturday, Sunday, or legal holiday.

(B) Extension of Time.

(1) General Prohibition Against Extensions of Time.

Except as provided in division (B)(2) of this section, the Supreme Court will not extend the time prescribed by these rules for filing a document, and the Clerk shall refuse to file requests for extension of time.

(2) Extension of Time to File Certain Documents.

(a) Parties may stipulate to extensions of time to file merit briefs, including reply briefs, under S. Ct. Prac. R. VI; merit briefs, including reply briefs, under S. Ct. Prac. R. XIX; or the response to a complaint or evidence under S. Ct. Prac. R. X. Each party may obtain in a case only one agreed extension of time not to exceed 20 days, provided the party has not previously obtained an extension of time from the Supreme Court under division B(2)(b) of this section. An agreed extension of time shall be effective only if a stipulation to the agreed extension of time is filed with the Clerk within the time prescribed by these rules for filing the brief or other document that is the subject of the agreement. The stipulation shall state affirmatively the new date for filing agreed to by the parties. The Clerk shall refuse to file a stipulation to an agreed extension of time that is not tendered timely in accordance with this rule.

(b) If a stipulation to an agreed extension of time cannot be obtained, a party may file a request for extension of time to file a brief, the response to a complaint, or evidence. The Supreme Court will grant a party only one extension of time, not to exceed 10 days, provided the request for extension of time states good cause for an extension and is filed

with the Clerk within the time prescribed by the rules for filing the brief or other document that is the subject of the request. The Clerk shall refuse to file a request for extension of time that is not tendered timely in accordance with this rule.

(3) Effect of Extension of Time Upon Other Parties on the Same Side.

When one party receives an extension of time under division (B)(2) of this section, the extension shall apply to all other parties on that side.

Section 4. Motions; Responses.

(A) An application for an order or other relief shall be made by filing a motion for the order or relief. The motion shall state with particularity the grounds on which it is based.

(B) If a party files a motion with the Supreme Court, any other party may file a memorandum opposing the motion within 10 days from the date the motion is filed, unless otherwise provided in these rules. A reply to a memorandum opposing a motion shall not be filed by the moving party.

(C) The Supreme Court may act upon a motion without awaiting a memorandum opposing the motion if the motion is for a procedural order, including an extension of time to file a merit brief, or if the motion requests emergency relief and the interests of justice warrant immediate consideration by the Supreme Court. Any party adversely affected by the action of the Supreme Court may request vacation of the action.

Section 5. Frivolous Actions; Sanctions.

If the Supreme Court, on motion or on its own initiative, determines that an appeal or other action is frivolous or is prosecuted for delay, harassment, or any other improper purpose, it may impose, on the person who signed the appeal or action, a represented party, or both, appropriate sanctions, including an award to the opposing party of reasonable expenses, reasonable attorney fees, costs or double costs, or any other sanction considered just. An appeal or other action shall be considered frivolous if it is not reasonably well-grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

Section 6. Settlement Conferences.

(A) Referral of Cases for Settlement Conferences.

The Supreme Court may, *sua sponte* or on motion by a party, refer to a master commissioner for a settlement conference any case that originated in the court of appeals, any appeal from an administrative agency, any original action, or any non-felony case that the Supreme Court deems appropriate. The master commissioner may conduct the settlement conference in person or by telephone. At the settlement conference, the parties shall explore settling the case, simplifying the issues, and expediting the procedure, and may consider any other matter that might aid in resolving the case.

(B) Attendance.

If a case is referred for a settlement conference, each party to the case, or the representative of each party who has full settlement authority, and the attorney for each party shall attend the conference, unless excused, in writing, by the master commissioner to whom the case has been referred. If a party or an attorney fails to attend the conference without being excused, the Supreme Court may assess the party or the attorney reasonable expenses caused by the failure, including reasonable attorney fees or all or a part of the expenses of the other party. The

Supreme Court may also dismiss the action, strike documents filed by the offending party, or impose any other appropriate penalty.

(C) Extension of Time to File Briefs.

On motion by a party, the Supreme Court may, notwithstanding Section 3(B) of this rule, extend filing deadlines or stay the referred case if the extension or stay will facilitate settlement. A request for an extension of time shall be filed with the Clerk within the time prescribed by the rules for filing the brief or other document that is the subject of the request.

(D) Confidentiality.

Unless disclosable by the order entered under Section 6(E) of this rule, statements uttered during the settlement conference are confidential. Unless all participants consent to disclosure, no one, including the master commissioner, a party, or a party's attorney, shall disclose any statement uttered in a settlement conference to the Supreme Court. The Supreme Court may impose penalties for any improper disclosure made in violation of this provision.

(E) Settlement Conference Order.

At the conclusion of the settlement conference, the Supreme Court will enter an appropriate order.

Staff Commentary to Rule XIV

(April 1, 1996; April 28, 1997; and July 12, 1999 Amendments)

Section 1(A)

This amendment clarifies the requirement that filings be made "during the regular business hours of the Clerk's Office".

Section 1(B)(1)(a)

This amendment recognizes the substantive amendments to Section 3 of the rule. See Section 3(B)(2) and staff commentary regarding that provision.

Former Section 1(B)(2)

These amendments delete former Section 1(B)(2). This provision contained language considered unnecessary in light of the Clerk's authority under S. Ct. Prac. R. 8, Section 6, to reject documents not in compliance with the Rules of Practice.

Section 1(C)

This amendment recognizes the provision in new S. Ct. Prac. R. XIX for the Court to extend the time for filing the record and briefs in a capital case appealed directly to the Supreme Court from a court of common pleas.

Section 2(D)

Section 2(A) of Rule XIV requires that any document filed with the Clerk be served on the other parties to the case. A party who is not served a document may miss the deadline for filing a responsive document and therefore be adversely affected by the failure of service. Under the former rules, that party was strictly prohibited from filing a responsive document past the deadline. See S. Ct. Prac. R. XIV, Section 1(C).

The amendment provides a procedure for dealing with this issue. A party who is adversely affected by a failure of service may move the Court to strike the document that was not served. The Court has a great deal of latitude in determining how to act

upon the motion. If it finds that service was not made, the Court may strike the document or give the adversely affected party a new deadline for responding to the document. On the other hand, the Court may deny the motion if it determines that, although there was a failure of service, the movant was not adversely affected by not being served. This could happen if, for example, the movant had timely knowledge that a document not served upon the movant had, in fact, been filed with the Clerk, and the movant was therefore able to file a responsive document by the original deadline.

Section 2(E)

This amendment requires an attorney or party whose document is rejected for filing to notify the other parties to the case of the rejection. This will prevent those parties from mistakenly assuming, based upon their having been served with a copy of the document, that the document was, in fact, filed.

Section 3(A)

Some language in this section has been stricken because, except with regard to expedited election matters, the current rules do not prescribe any filing or other time frames that are fewer than seven days. The amendment to S. Ct. Prac. R. X, Section 9, to impose directly in the rules a schedule for briefing expedited election cases, deliberately sets an abbreviated schedule which should not be extended by a general rule.

Section 3(B)(2)

Under the former rules, limited extensions of time were available only with respect to filing merit briefs. This amendment also permits limited extensions of time with respect to filing a response to a complaint or evidence in an original action under S. Ct. Prac. R. X.

Section 3(B)(3)

This amendment clarifies current practice.

Section 4(B)

This amendment clarifies current practice.

Section 5

This rule clarifies former practice by specifically defining the conduct that warrants sanctions and the type of sanctions available. The rule is more detailed than Rule 23 of the Rules of Appellate Procedure and includes a definition of frivolous conduct adapted from Rule 11 of the Federal Rules of Civil Procedure. Under the rule, a person is subject to an objective standard to determine whether particular conduct is sanctionable. The rule applies to all actions, including original actions, filed with the Court.

Sanctions specifically include the reasonable expenses, attorney's fees, single or double costs of the opposing party, and any other sanction deemed just. The catch-all is intended to provide a vehicle for restricting future filings as part of the Court's sanctions against persons who repeatedly file frivolous actions or appeals. Sanctions are discretionary and may be imposed on motion or sua sponte. The rule also gives the Court the discretion to impose sanctions on the represented party.

Section 6(A)

In this division, the Supreme Court authorizes referral of cases for settlement conferences. The Supreme Court now employs mediation to resolve selected cases; however, this division would allow the Court to employ other dispute resolution procedures to settle matters. The Court will choose cases it considers amenable to settlement. Some selection criteria will be whether the case contains settled points of law, contains evidentiary disputes, or is in need of quick resolution. The Court does not need to settle the entire case; it may settle some issues in the case to simplify it.

Under the division, the Court refers cases to a Master Commissioner, who is a staff attorney but could be a Special Master Commissioner with specific expertise for certain cases. The Court contemplates referring direct appeals from the Courts of Appeals, appeals from the Board of Tax Appeals and the Public Utilities Commission, original actions, and non-felony cases the Court deems appropriate for settlement conference.

Section 6(B)

The Supreme Court requires each party, or each party's representative with full settlement authority, and each party's attorney to attend the conference. Under this division, the Court may impose penalties, including dismissal of the case, for failure to attend a conference.

Section 6(C)

The Supreme Court will schedule conferences as early in the life of the case as possible. The Court expects to resolve a case through settlement, or determine that the case cannot be settled, before briefs are due to limit litigation expenses. Nevertheless, the Court realizes that extensions of time to file briefs may be necessary. Accordingly, this division authorizes such extensions, if the party requests extension within the time prescribed for filing the brief or other document that is the subject of the request. Failure to file a timely request may result in dismissal of the case for lack of prosecution.

Section 6(D)

This division emphasizes the confidential nature of settlement conferences. In addition to this rule, R.C. 2317.023 renders a "mediation communication" confidential and non-disclosable in civil or administrative proceedings.

Section 6(E)

Under this division, the Supreme Court may enter orders pertaining to decisions reached at the settlement conferences.

RULE XV. DOCKET FEES AND SECURITY DEPOSITS

Section 1. Docket Fees to Institute an Action.

The following docket fees are imposed by section 2503.17 of the Revised Code and shall be paid before the document is filed or the case is docketed:

For filing a notice of appeal	$40.00
For filing a notice of cross-appeal	$40.00
For filing an order of a court of appeals certifying a conflict	$40.00
For instituting an original action	$40.00

Section 2. Security Deposits in Original Actions.

Original actions also require a deposit in the amount of $100.00 as security for costs. The security deposit shall be paid before the case is docketed. In extraordinary circumstances, the Supreme Court may require an additional security deposit at any time during the action.

Section 3. Affidavit of Indigency in Lieu of Fees.

An affidavit of indigency may be filed in lieu of docket fees or security deposits. The affidavit shall be executed, not more than one year prior to being filed in the Supreme Court, by the party on whose behalf it is filed and shall state the reasons the party is unable to pay the docket fees or the security deposit. Counsel appointed by a trial or appellate court to represent an indigent party may file a copy of the entry of appointment in lieu of an affidavit of indigency. At any stage in the proceeding, the Supreme Court may review and determine the sufficiency of an affidavit of indigency.

Staff Commentary to Rule XV
(April 1, 1996 Amendments)

Section 3

Because the financial status of an indigent appellant or relator may improve, this amendment requires that an affidavit of indigency--submitted in lieu of a filing fee--be executed no more than one year before it is filed in the Supreme Court.

RULE XVI. PRESERVATION OF RECORDS AND FILES

The Clerk of the Supreme Court is the custodian of all documents and other items filed in Supreme Court cases, and they shall not be taken from the Clerk's custody unless by special order of the Supreme Court. The Supreme Court may direct that any records may be reproduced as set forth in section 9.01 of the Revised Code.

RULE XVII. CONDITIONS FOR BROADCASTING AND PHOTOGRAPHING SUPREME COURT PROCEEDINGS

Section 1. Written Request.

Supreme Court proceedings may be broadcast, televised, recorded, or photographed only with Supreme Court approval. A request for permission to broadcast, televise, record, or photograph any proceedings shall be made in writing on a form provided by the Clerk of the Supreme Court and shall be filed with the Clerk not later than 24 hours prior to the session of the Supreme Court to which the request pertains.

Section 2. Review of Request.

Consistent with the general standards contained in Sup. R. 12, the Chief Justice will review and rule on all written requests filed pursuant to Section 1 of this rule.

Section 3. Permissible Equipment and Operators.

(A) Generally, the Chief Justice will permit no more than one portable camera with one operator, one still camera with one photographer, and one audio system for radio broadcast in the courtroom. If suitable, any existing audio pickup system in the court facility shall be used by the media. In the event no audio pickup system is available, microphones and other electronic equipment necessary for an audio pickup shall be visible, but as inconspicuous as possible.

(B) Arrangements between or among media for "pooling" of equipment shall be the responsibility of the media representatives authorized to cover the proceeding and shall be made outside the courtroom and without imposing on the Supreme Court or its personnel. If disputes arise over arrangements between or among media representatives, the Chief Justice will exclude all contesting representatives from the proceeding.

Section 4. Prohibitions and Limitations.

(A) Media representatives shall be permitted to transmit or record only the proceedings in the courtroom while the Supreme Court is in session. There shall be no transmission or recording of conferences conducted at the bench or conferences conducted in a court facility between attorneys and clients or co-counsel.

(B) The use of electronic or photographic equipment that produces distracting sound or light shall be prohibited. Generally, no artificial lighting other than that normally used in the courtroom shall be employed. The Chief Justice may permit modification of the normal lighting in the courtroom if it can be improved without becoming obtrusive.

(C) The changing of film or recording tape in the courtroom during Supreme Court proceedings is prohibited.

(D) This rule shall not be construed to grant media representatives greater rights than permitted by any law in which public or media access or publication is prohibited or limited.

Section 5. Revocation of Permission.

Upon the failure of any media representative to comply with the conditions prescribed by the Chief Justice or this rule, the Chief Justice may revoke the permission to broadcast, televise, record, or photograph Supreme Court proceedings.

RULE XVIII. CERTIFICATION OF QUESTIONS OF STATE LAW FROM FEDERAL COURTS

Section 1. When a State Law Question May Be Certified.

The Supreme Court may answer a question of law certified to it by a court of the United States. This rule may be invoked when the certifying court, in a proceeding before it, determines there is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent in the decisions of this Supreme Court, and issues a certification order.

Section 2. Contents of Certification Order.

The certification order shall contain all of the following:

(A) The caption of the case;

(B) A statement of facts showing the nature of the case, the circumstances from which the question of law arises, the question of law to be answered, and any other information the certifying court considers relevant to the question of law to be answered;

(C) The name of each of the parties;

(D) The names, addresses, and telephone numbers of counsel for each party;

(E) A designation of one of the parties as the moving party.

Section 3. Preparation of Certification Order; Notice of Filing.

The certification order shall be signed by any justice or judge presiding over the cause or by a magistrate judge presiding over the cause pursuant to 28 U.S.C. Section 636(c). The clerk of the certifying court shall serve copies of the certification order upon all parties or their counsel of record and file with the Supreme Court the certification order under seal of the certifying court, along with proof of service.

Section 4. Record.

The Supreme Court may request that the original or copies of all or any portion of the record before the certifying court be transmitted to the Clerk of the Supreme Court.

Section 5. Parties.

The party designated by the certifying court as the moving party shall be referred to as the petitioner. The party adverse to the petitioner shall be referred to as the respondent.

Section 6. Preliminary Memoranda; Court Determination of Whether to Answer Question Certified.

Within 20 days after a certification order is filed with the Supreme Court, each party shall file a memorandum, not to exceed 15 pages in length, addressing all questions of law certified to the Supreme Court. The Supreme Court will review the memoranda and issue an entry identifying the question or questions it will answer and declining to answer the remaining question or questions. The Clerk of the Supreme Court shall send a copy of the entry to the certifying court and to all parties or their counsel.

Section 7. Merit Briefs.

If the Supreme Court decides to answer any of the questions certified to it, the petitioner shall file a merit brief within 30 days of the date of the entry issued by the Supreme Court pursuant to Section 6 of this rule. The body of the petitioner's merit brief shall not exceed 50 pages. The respondent shall file an answer brief within 20 days after the filing of petitioner's brief. The body of the answer brief shall not exceed 50 pages. The petitioner may file a reply brief within 10 days after the filing of respondent's brief. The body of a reply brief shall not exceed 15 pages. All merit briefs shall comply with the requirements of S. Ct. Prac. R. VI, Sections 1, 2 and 3, to the extent applicable.

Section 8. Opinion.

If the Supreme Court decides to answer a question or questions certified to it, it will issue a written opinion stating the law governing the question or questions certified. The Clerk shall send a copy of the opinion to the certifying court and to the parties or their counsel.

Staff Commentary to Rule XVIII
(April 1, 1996 Amendments)

Section 7

This amendment clarifies current practice.

RULE XIX. DEATH PENALTY APPEALS

(Clerk's Note: This rule applies only to death penalty appeals from the courts of common pleas--i.e., cases in which the death penalty has been imposed for an offense committed on or after January 1, 1995. Other death penalty appeals are briefed in accordance with S. Ct. Prac. R. VI.)

Unless this rule provides otherwise, the Supreme Court Rules of Practice shall be followed in death penalty appeals.

Section 1. Institution of Appeal.

(A) Perfection of Appeal.

(1) To perfect an appeal of a case in which the death penalty has been imposed for an offense committed on or after January 1, 1995, the appellant shall file a notice of appeal in the Supreme Court within 45 days from the journalization of the entry of the judgment being appealed or the filing of the trial court opinion pursuant to section 2929.03(F) of the Revised Code, whichever is later.

(2) If the appellant timely files in the trial court a motion for a new trial, or for arrest of judgment, the time for filing a notice of appeal begins to run after the order denying the motion is entered. However, a motion for a new trial on the ground of newly discovered evidence extends the time for filing the notice of appeal only if the motion is made before the expiration of the time for filing a motion for a new trial on grounds other than newly discovered evidence.

(3) When the time has expired for filing a notice of appeal in the Supreme Court, the appellant may seek to file a delayed appeal by filing a motion for delayed appeal and a notice of appeal. The motion shall state the date of the journalization of the entry of the judgment being appealed, the date of the filing of the trial court opinion pursuant to section 2929.03(F) of the Revised Code, and adequate reasons for the delay. Facts supporting the motion shall be set forth in an affidavit.

(B) Copy of the Praecipe to Court Reporter.

The notice of appeal shall be accompanied by a copy of the praecipe that was served by the appellant on the court reporter pursuant to Section 3(B) of this rule. The appellant shall certify on this copy the date the praecipe was served on the reporter.

(C) Notice to the Common Pleas Court.

The Clerk of the Supreme Court shall send a date-stamped copy of the notice of appeal to the clerk of the court of common pleas whose judgment is being appealed.

(D) Jurisdiction of Common Pleas Court after Appeal to Supreme Court Is Perfected.

After an appeal is perfected from a court of common pleas to the Supreme Court, the court of common pleas is divested of jurisdiction, except to take action in aid of the appeal, to grant a stay of execution if the Supreme Court has not set an execution date, or to appoint counsel.

Section 2. Appointment of Counsel.

If a capital appellant is unrepresented and is indigent, the Supreme Court will appoint the Ohio Public Defender or other counsel qualified pursuant to Sup. R. 20 to represent the appellant, or order the trial court to appoint qualified counsel.

Section 3. Record on Appeal.

(A) Composition of the Record of Appeal.

The record on appeal shall consist of the original papers filed in the trial court and exhibits to those papers; the transcript of proceedings, including all exhibits, along with computer diskettes of the transcript, if available; and a certified copy of the docket and journal entries prepared by the clerk of the trial court.

(B) The Transcript of Proceedings; Duty of Appellant to Order.

(1) The transcript of proceedings shall be prepared by the court reporter appointed by the trial court to transcribe the proceedings for the trial court. The reporter shall transcribe into written form all of the trial court proceedings, including trial, hearing, and other proceedings, whether recorded by any medium, including stenographic means and videotape.

(2) Before filing a notice of appeal in the Supreme Court, the appellant shall, by written praecipe, order from the reporter a complete transcript of the proceedings. See Form H following these rules for a sample praecipe.

(3) A transcript prepared by a reporter under this rule shall be in the following form:

(a) The transcript shall include a front and back cover; the front cover shall bear the title and number of the case and the name of the court in which the proceedings occurred;

(b) The transcript shall be firmly bound on the left side;

(c) The first page inside the front cover shall set forth the nature of the proceedings, the date or dates of the proceedings, and the judge or judges who presided;

(d) The transcript shall be prepared on white paper, 8 1/2 by 11 inches in size, with the lines of each page numbered and the pages sequentially numbered;

(e) An index of witnesses shall be included in the front of each volume of the transcript and shall contain page and line references to direct, cross, re-direct, and re-cross examination;

(f) An index to exhibits, whether admitted or rejected, briefly identifying each exhibit, shall be included in each volume following the index of witnesses and shall reflect page and line references where each exhibit was identified and offered into evidence, was admitted or rejected, and if any objection was interposed;

(g) Documentary exhibits such as papers, maps, photographs, and similar items that were admitted shall be firmly attached, either directly or in an envelope to the inside rear cover, except as to exhibits whose size or bulk makes attachment impractical; documentary exhibits offered at trial whose admission was denied shall be included in a separate envelope with a notation that they were not admitted and also attached to the inside rear cover, unless attachment is impractical;

(h) No volume of a transcript shall exceed 250 pages in length, except it may be enlarged to 300 pages, if necessary, to complete a part of the voir dire, opening statements, closing arguments, or jury instructions; when it is necessary to prepare more than one volume, each volume shall contain the number and name of the case and be numbered sequentially and consecutively from the previous volume, and the separate volumes shall be approximately equal in length.

(4) The reporter shall certify the transcript as correct, and state whether it is complete.

(C) Statement of the Evidence or Proceedings When No Report Was Made or When the Transcript Is Unavailable.

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee no later than 20 days prior to the time for transmission of the record pursuant to Section 4 of this rule. The appellee may serve objections or proposed amendments to the statement within 10 days after service. The statement and any objections or proposed amendments shall be forthwith submitted to the trial court for settlement and approval. The trial court shall act prior to the time for transmission of the record pursuant to Section 4 of this rule, and, as settled and approved, the statement shall be included by the clerk of the trial court in the record on appeal.

(D) Correction or Modification of the Record.

If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated in the record, the parties by stipulation, or the trial court, either before or after the record is transmitted to the Supreme Court, or the Supreme Court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court.

Section 4. Transmission of the Record.

(A) Time for Transmission; Duty of Appellant.

(1) The clerk of the trial court shall prepare a certified copy of the docket and journal entries, assemble the original papers, and transmit the record on appeal to the Clerk of the Supreme Court within 60 days after the date the notice of appeal is filed in the Supreme Court, unless an extension of time is granted under division (C) of this section.

(2) The appellant shall take any action necessary to enable the clerk to assemble and transmit the record.

(B) Duty of Trial Court and Supreme Court Clerks.

(1) Before transmitting the record to the Supreme Court, the clerk of the trial court shall number the documents and exhibits comprising the record. The clerk of the trial court shall prepare an index of the documents and exhibits, correspondingly numbered and identified with

reasonable definiteness. All exhibits listed in the index shall be briefly described. The clerk of the trial court shall send a copy of the index to all counsel of record in the case and transmit the index with the record to the Clerk of the Supreme Court.

(2) The clerk of the trial court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the Supreme Court and shall note the transmission on the appearance docket. Transmission of the record is effected when the Clerk of the Supreme Court receives the record for filing. The Clerk of the Supreme Court shall notify counsel of record when the record is filed in the Supreme Court.

(C) Extension of Time for Transmission of the Record.

(1) The Supreme Court may extend the time for transmitting the record or, notwithstanding the provisions of S. Ct. Prac. R. XIV, Section 1(C), may permit the record to be transmitted and filed after the expiration of the time allowed or fixed.

(2) A request for extension of time to transmit the record shall be made by motion, stating good cause for the extension and accompanied by one or more affidavits setting forth facts to demonstrate good cause. The motion shall be filed within the time originally prescribed for transmission of the record or within the time permitted by the previously granted extension.

(3) The request for extension of time to transmit the record shall be accompanied by an affidavit of the court reporter if the extension is necessitated by the court reporter's inability to transcribe the transcript of proceedings in a timely manner.

(D) Retention of Copy of the Record in the Trial Court.

(1) Before transmitting the record to the Clerk of the Supreme Court, the clerk of the trial court shall make a copy of the record. A copy of the original papers, transcript of proceedings, and any documentary exhibits shall be made by photocopying the original papers, transcript of proceedings, and documentary exhibits. A copy of any physical exhibits may be made by either photographing or videotaping the physical exhibits. A copy of a videotape or audiotape that is part of the record shall be made by making a duplicate videotape or audiotape.

(2) The clerk of the trial court shall retain the copy of the record for use in any postconviction proceeding authorized by section 2953.21 of the Revised Code or for any other proceeding authorized by these rules.

Section 5. Briefs on the Merits.

(A) The appellant shall file a merit brief with the Supreme Court within 90 days from the date the Clerk of the Supreme Court receives and files the record from the trial court.

(B) Within 60 days after the filing of appellant's brief, the appellee shall file a merit brief.

(C) The appellant may file a reply brief within 20 days after the filing of appellee's brief.

(D) The form of the briefs shall comply with the provisions of S. Ct. Prac. R. VI.

(E) A party may obtain one extension of time to file a merit brief in accordance with the provisions of S. Ct. Prac. R. XIV, Section 3(B)(2).

Staff Commentary to Rule XIX
(April 1, 1996 Amendments)

This new rule addresses the procedures for handling appeals of capital cases directly from the trial courts.

Section 1(A)

This section prescribes the manner in which a death penalty appeal is perfected. It includes a provision to toll the time for filing a notice of appeal until the trial court rules on a defendant's timely filed motion for new trial under Crim.R. 33 or for arrest of judgment under Crim.R. 34. This provision is adapted from App.R. 4(B)(3), which contains a similar rule, to give capital defendants appealing directly to the Supreme Court the same benefit as that given to defendants appealing to the court of appeals.

Section 1(D)

This section addresses the trial court's jurisdiction after an appeal to the Supreme Court is perfected. The trial court's authority to stay execution of sentence after appeal is limited to cases where the Supreme Court has not set an execution date. See *State v. Steffen* (1994), 70 Ohio St.3d 399.

Section 3

The language of Section 3 is borrowed from App. R. 9, with editorial changes and modifications appropriate for capital cases. The language regarding composition of the record on appeal is modified slightly, to track more closely the language appearing in S. Ct. Prac. R. V, Section 1. Language regarding transcription of the record has also been changed to be more concise.

Section 4

Section 4 is based upon App. R. 10, with modifications appropriate for capital cases. It prescribes a definite time frame for filing the record, requiring that the trial court clerk transmit the record to the Supreme Court within 60 days after the notice of appeal is filed in the Supreme Court. In most instances, this should provide adequate time for the court reporter to transcribe the proceedings and the trial court clerk to prepare the record for transmission. Questions involving the completeness of the record would be resolved under Section 3(D).

Section 4(B) requires that the trial court clerk prepare an index of all of the items contained in the record and serve a copy on counsel of record. This is consistent with S. Ct. Prac. R. V, Section 3. Consistent with S. Ct. Prac. R. XIV, Section 1(A), transmission of the record is effective when the Clerk of the Supreme Court receives the record for filing.

By statute, postconviction proceedings will run concurrently with the direct merit appeal of a capital case to the Supreme Court. Therefore, Section 4(D) requires that, before transmitting the original record to the Supreme Court, the trial court clerk make and retain a duplicate of the record for use in postconviction proceedings.

Section 5

The briefing schedule in Section 5 allows 90 days for filing the appellant's brief, 60 days thereafter for filing the appellee's brief, and 20 days for filing any reply brief. This schedule recognizes that the appellant's counsel's burden is greater than the prosecutor's, insofar as the appellant's counsel must search the usually extensive record for error before preparing a merit brief. Extensions of time would be granted on the same basis available to other litigants under S. Ct. Prac. R. XIV (3)(B)(2). That rule provides for only one extension of up to 20 days to file a merit brief on stipulation of the parties, or, if stipulation cannot be obtained, a party may request and the Court may grant only one extension of up to 10 days.

RULE XX. [Reserved.]

RULE XXI. TITLE

These rules shall be known as the Rules of Practice of the Supreme Court of Ohio and shall be cited as "S. Ct. Prac. R. _____".

RULE XXII. EFFECTIVE DATES

(A) The Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on January 11, 1994, shall take effect on June 1, 1994. These rules supersede the Rules of Practice of the Supreme Court of Ohio, effective August 16, 1971, as amended through July 16, 1990. These rules govern all proceedings and actions brought after the effective date and also all further proceedings and actions then pending, except to the extent that their application in a particular action pending when the rules take effect would not be feasible or would work an injustice, in which event the former procedure applies.

(B) Amendments to the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on January 9, 1996, and March 19, 1996, shall take effect on April 1, 1996.

(C) Amendments to Rule XIV of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on March 31, 1997, shall take effect on April 28, 1997.

(D) Amendments to Rule XIX of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on April 7, 1998, shall take effect on June 1, 1998.

(E) Amendments to Rule VI of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on September 15, 1998, shall take effect on October 19, 1998.

(F) Amendments to Rule XIV of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on June 8, 1999, shall take effect on July 12, 1999.

(G) Amendments to Rules II, III, IV, V, VI, IX, X, and XI of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on January 25, 2000, shall take effect on April 1, 2000.

(H) Amendments to Rules I, II, IV, VI, VIII, XVII, and XIX of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on April 10, 2000, shall take effect on June 1, 2000.

(I) Amendments to Rules VIII and IX of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on November 14, 2000, shall take effect on February 1, 2001.

(J) Amendments to Rules III and IX of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on February 5, 2002, shall take effect on April 1, 2002.